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CONCISE

PRECEDENTS IN CONVEYANCING.

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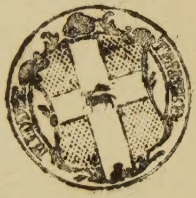
CONCISE

Precedents in Conveyancing;

ADAPTED TO THE

ACT TO AMEND THE LAW OF REAL PROPERTY;

8 & 9 *VICT. CAP.* 106,



WITH

PRACTICAL NOTES, AND OBSERVATIONS ON THE ACT,

AND ON THE ACT FOR THE CESSER OF ATTENDANT TERMS.

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ADDENDA.

Page 77.—With respect to the effect in actions of ejectment of the extinguishment of terms by the Act, see *Doe* d. *Cadwalader* v. *Price*, 16 M. & W. 603; *Doe* d. *Hall* v. *Moulsdale*, Id. 689.

INTRODUCTION.

Object of the work.

THE object of the First Edition of the present Work was to take the opportunity, suggested by the "Act to simplify the Transfer of Property (*a*)," of submitting to the Profession some Precedents of Assurances, of more concise form and language than those in ordinary use. Not that the Act necessitated any considerable change in the forms of assurances, but because it seemed desirable to follow up the proceeding of the Legislature with such assistance as the Profession could of itself afford; and it appeared to the Author, that, as the compiler and editor of a Collection of Precedents, which had been marked by the approbation of the most eminent conveyancing counsel, he might, without impropriety, take upon himself the office of endeavouring to simplify the forms hitherto in use for the transfer of Property. The attempt was very favourably received by the Profession; but

(*a*) 7 & 8 Vict. c. 76, infra, p. 10.

the Act to which the first edition of the work had reference having been repealed, and a new statute passed in lieu of the repealed act (*a*), it became necessary, in the second edition, to remodel some of the Precedents, and to make alterations in the greater number of them; and also to introduce the new Act, with a few notes and observations upon its enactments. The present edition has been revised throughout, and some remarks added, particularly on the Act for the Cesser of Attendant Terms.

The work contains no experimental or fanciful Precedents, and is confined wholly to the object of simplifying the Forms in common use, and retrenching their redundant expressions. It is believed, that nearly every Precedent in the book will (when the parcels are of moderate length) be contained in a single skin, and that hardly any will exceed two; but it must at the same time be borne in mind, that (except in those cases in which

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(*a*) The reasons for the repeal of the first, and for the provisions of the second Act, will be found very clearly and happily expressed in a letter, addressed by Mr. Bellenden Ker to the Lord Chancellor, and which Mr. Ker kindly allowed the Author to publish in the present work; see infra, p. 10. The reader will, no doubt, concur with the Author in thanking Mr. Ker for the permission.

the new Act has authorised an alteration) the Precedents differ in no material respect from those which have been long and constantly used by the Profession (*a*).

Departure from the old Forms.

The principal points in which the Precedents in this Collection differ from the old Forms are as follows:—

The Reference to a Lease for a Year, or to the Statute dispensing with a Lease for a Year, and the Limitations to Trustees to preserve Contingent Remainders, are omitted. These changes depend on the new Act, Sects. 2 and 8; they are not compulsory, but will, from their convenience, be generally adopted.

All Unnecessary Recitals have been dispensed with: thus, in a simple conveyance or mortgage, or settlement by a person seised in fee, the recitals of his seisin and of the contract have been omitted, and the operative part immediately follows the parties.

The statement of a Nominal Consideration has also been omitted. It was originally introduced to render a conveyance of freehold

(*a*) In the Appendix will be found two Acts which were introduced by Lord Brougham, and passed into laws. It is doubtful whether the theory upon which these Acts are framed can by any degree of skill be made available for practical purposes to any important extent.

estate capable of taking effect as a bargain and sale, if it failed of its proper effect, and was then absurdly applied to every species of assurance of every kind of property. It never was of the slightest use except in a bargain and sale inrolled, and in the creation of a term by the owner of a freehold estate, since in no other case could the deed operate as a bargain and sale for want of inrolment; and if it could have so operated, it would, in many cases, have frustrated the intention, by vesting the legal estate in the bargainee, and converting the uses into trusts. The nominal consideration has been of late generally disused, and will, no doubt, be soon universally discarded.

The Real Consideration is described simply as £——, without the idle addition of its being lawful money of the United Kingdom, or the like.

The Operative Words are used in the present tense only. The custom of giving them in the past tense arose from the ancient mode of conveyance by livery of seisin, with a subsequent charter of feoffment to preserve evidence of the livery. The charter witnessed, that the feoffor "hath enfeoffed, given, or granted," and generally added, "and by these presents hath confirmed," (West's Sym-

bolography, edit. 1615, sect. 238 et seq.; 2 Bl. Comm., App. No. 1), which was a true and reasonable form. In the modern form, in which the conveyance is by the deed itself, the insertion of the words in the past tense is mere nonsense, and has of late been commonly dispensed with. The word "release" has not been retained as the general operative word of conveyance of freeholds, because its use arose from the lease and release being the ordinary mode of conveyance, and is no longer applicable, now that the reference to the lease for a year and to the statute dispensing with it are alike done away with. The operative word ordinarily used throughout the book for the conveyance of freeholds is "grant," with the addition of "confirm" and "release" when really appropriate. "Grant" is used as being not only the word of most ancient use in English conveyances, and in itself expressive and appropriate (*a*), but also as being the most strictly technical and appropriate word under

(*a*) The old but unfounded notion of "grant" implying a warranty or covenant, (4 Martin's Conveyancing, 40; *Hinde* v. *Gray*, 1 M. & G. 195), and being, therefore, an improper word for trustees, mortgagees, or the like to convey by, is, of course, at an end. (See the new Act, sect. 4).

the new Act. (Sect. 2). For chattels real and personal the word "assign" is the only operative word employed, except when circumstances render "confirm" or "release" appropriate. In appointments, of course, such operative words are used as the powers require; and, for married women, the statutory expression (3 & 4 Will. 4, c. 74, s. 77) "dispose of" is coupled with "grant," or any other which appears appropriate to the case.

The Parcels in the Precedents are uniformly described by reference to a schedule and map, that being much the clearest as well as the shortest mode of description, and one which the parochial maps and schedules made for the commutation of tithes have rendered the most common and very easily attainable. In those cases, however, in which this mode of description is not attainable, the parcels can be introduced into the body of the deed in the old form, without any other alteration than omitting the reference in the Precedent to the map and schedule.

The General Words have been very greatly abridged by omitting for the most part the enumeration of particulars. It is much to be desired that the Legislature may enable conveyancers to dispense with them altogether, by enacting, in the language of the

general words themselves, that all the things they specify, and all other rights, easements, and appurtenances, whether strictly appurtenant, or appurtenant only by reputation or enjoyment, shall pass by the conveyance of the property itself. At present, indeed, there is no question but that what is strictly appurtenant in law will so pass; but there are so many rights and easements which are not strictly appurtenant in law, but are only appurtenant by reputation and enjoyment, that the general words in a modified shape must be retained (*a*). The clause called the "all the estate" clause has been retained, (although in a very abridged shape), to meet those cases in which the conveying party has a term of years, or some other interest in the property distinct from his estate which appears in the deed, and which might be held not to pass except by virtue of this clause. In ordinary cases, however, the clause may be safely omitted. The clause called "and

(*a*) In one of the Acts mentioned (supra, p. 3) to have been introduced by Lord Brougham, (8 & 9 Vict. c. 119), there is a clause (sect 2) intended to supersede general words in conveyances under that Act; but the provision does not very satisfactorily meet the real defect as to things reputed to be, but not actually appurtenant, and, being confined to conveyances in pursuance of that Act, is not of any general use.

the reversion," &c., has been dispensed with: it was wholly useless, and has of late been much disused in practice. The only words used in the habendum are "to hold;" and in mortgages the old form, "subject to the proviso for redemption hereinafter contained," is omitted. The expression "hereinbefore granted [*or* "assigned" *or* "demised"], or expressed and intended so to be," and similar expressions, are omitted, except where the omission might occasion ambiguity. The expressions in question should only be used where it is necessary to distinguish the property conveyed, &c., from some other property; and even then the words "or expressed and intended so to be" may, for the most part, be safely omitted.

In limiting Powers no restriction has been imposed on their exercise, except that it shall be by deed. The ordinary restriction, that it shall be by deed, "sealed and delivered in the presence of, and attested by, two or more credible witnesses," is troublesome and useless, and sometimes renders nugatory the intended execution of a power by an omission to comply with an unmeaning form. The restriction to the exercise by deed is proper to preclude the power from being exercised by a mere letter or note in writing, penned without

due consideration, and without that general form which the law considers necessary for the conveyance of estates.

In framing Covenants, the word "covenant" only is used; and the covenants for title have, generally speaking, been reduced to covenants for right to convey free from incumbrances, and for further assurance, and have been most materially shortened.

The Power to appoint New Trustees and the other powers have also been very much shortened, without, it is believed, impairing their efficiency; and, generally speaking, redundancies of expression have been cut off.

It is, of course, to be borne in mind, that so small a work as the present can offer but a very small variety of Precedents, and those only of the simplest assurances; but the examination of these Forms will enable the draftsman readily to shorten and simplify other assurances, or those parts of them which admit of being shortened and simplified.

The Author has much pleasure in repeating his thanks to his friend T. C. Wright, Esq., of Lincoln's Inn, for his valuable and efficient assistance in preparing the Precedents.

Letter from H. Bellenden Ker, Esq., *addressed to the* Lord Chancellor.

"My Lord,

"In compliance with your Lordship's direction, I have, in conjunction with Mr. Hayes and Mr. Christie, revised the Act passed in the last session 'for simplifying the Transfer of Property (*a*).'

(*a*) AN ACT TO SIMPLIFY THE TRANSFER OF PROPERTY*.

[*Royal Assent, 6th August*, 1844.]

For simplifying the assurance of property by deed, be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons in this present Parliament assembled, and by the authority of the same, as follows; (that is to say),

DEFINITIONS.

Meaning of words defined.

I. That the words and expressions hereinafter mentioned, which in their ordinary signification have a more confined or a different meaning, shall in this act, except where the nature of the provision or the context of the act shall exclude such construction, be interpreted as follows; (that is to say),

"Land." the word "land" shall extend to manors, advowsons, messuages, lands, tithes, tenements, and hereditaments, whether corporeal or incorporeal, and to any undivided share thereof, and to any estate or interest therein, and to money subject to be invested in the purchase of land or any interest therein;

"Freehold." the word "freehold" shall extend to customary freehold, or such customary land as will pass by deed, or deed and surrender, and not by surrender alone; the word "conveyance"

"Conveyance,"

* The marginal notes have been altered, as those in the printed copies were not in all respects correct.

Though most of the various objects which that act embraces are of a practical and beneficial char-

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shall extend to a feoffment, grant, release, surrender, or other assurance of freehold land; the word "person" shall extend to a corporation as well as an individual; and every word importing the singular number only shall extend and be applied to several persons or things, as well as to one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

"Person."

Number and gender.

CONVEYANCE OF FREEHOLD LAND.

II. That every person may convey by any deed, without livery of seisin, or inrolment, or a prior lease, all such freehold land as he might before the passing of this act have conveyed by lease and release; and every such conveyance shall take effect as if it had been made by lease and release: Provided always, that every such deed shall be chargeable with the same stamp duty as would have been chargeable if such conveyance had been made by lease and release.

Freehold land may be conveyed by deed, without livery of seisin, or inrolment, or a prior lease.

PARTITIONS, EXCHANGES, ETC.

III. That no partition or exchange, or assignment of any freehold or leasehold land shall be valid at law, unless the same shall be made by deed.

Partitions, exchanges, and assignments to be by deed.

LEASES AND SURRENDERS.

IV. That no lease in writing of any freehold, copyhold, or leasehold land, or surrender in writing of any freehold or leasehold land, shall be valid as a lease or surrender unless the same shall be made by deed; but any agreement in writing to let or to surrender any such land shall be valid, and take effect as an agreement to execute a lease or surrender; and the person who shall be in the possession of the land, in pursuance of any agreement to let, may, from

Leases and surrenders in writing to be by deed.

acter, and ought to be included in any comprehensive scheme for ameliorating the law of pro-

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payment of rent or other circumstances, be construed to be a tenant from year to year.

EXECUTORY AND FUTURE INTERESTS.

Contingent, executory, and future interests may be conveyed by deed.

V. That any person may convey, assign, or charge by any deed any such contingent or executory interest, right of entry for condition broken, or other future estate or interest as he shall be entitled to, or presumptively entitled to, in any freehold, or copyhold, or leasehold land, or personal property, or any part of such interest, right, or estate respectively; and every person to whom any such interest, right, or estate shall be conveyed or assigned, his heirs, executors, administrators, or assigns, according to the nature of the interest, right, or estate, shall be entitled to stand in the place of the person by whom the same shall be conveyed or assigned, his heirs, executors, administrators, or assigns, and to have the same interest, right, or estate, or such part thereof as shall be conveyed or assigned to him, and the same actions, suits, and remedies for the same, as the person originally entitled thereto, his heirs, executors, or administrators, would have been entitled to if no conveyance, assignment, or other disposition thereof had been made: Provided, that no person shall be empowered by this act to dispose of any expectancy which he may have as heir, or heir of the body inheritable, or as next of kin, under the statutes for the distribution of the estates of intestates of a living person, nor any estate, right, or interest to which he may become entitled under any deed thereafter to be executed, or under the will of any living person, and no deed shall by force of this act bar or enlarge any estate tail; provided also, that no chose in action shall by this act be made assignable at law.

perty, yet the apparent inexpediency of some of its provisions, except, perhaps, as parts of such

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WARRANTY OR COVENANT.

VI. That neither the word "grant" nor the word "exchange," in any deed, shall have the effect of creating any warranty or right of re-entry, nor shall either of such words have the effect of creating any covenant by implication, except in cases where by any act of Parliament it is or shall be declared that the word "grant" shall have such effect.

No implied warranty or covenant to be created by "grant" or "exchange."

WRONGFUL CONVEYANCE.

VII. That no conveyance shall be voidable only when made by feoffment or other assurance, where the same would be absolutely void if made by release or grant; and that no assurance shall create any estate by wrong, or have any other effect than the same would have if it were to take effect as a release, surrender, grant, lease, bargain and sale, or covenant to stand seised, (as the case may be).

No wrongful conveyance to be of any effect.

CONTINGENT REMAINDERS.

VIII. That, after the time at which this act shall come into operation, no estate in land shall be created by way of contingent remainder; but every estate which before that time would have taken effect as a contingent remainder shall take effect (if in a will or codicil) as an executory devise, and (if in a deed) as an executory estate of the same nature, and having the same properties as an executory devise; and contingent remainders existing under deeds, wills, or instruments executed or made before the time when this act shall come into opertion, shall not fail, or be destroyed or barred, merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in its creation limited to determine.

Contingent remainders hereafter created to take effect as executory devises or estates, and existing contingent remainders not to fail by the destruction or merger of the preceding estate.

a scheme, and the confessedly imperfect frame of others, induce us to recommend, as the clearest

EXECUTOR OR ADMINISTRATOR OF MORTGAGEE.

Executor or administrator of mortgagee empowered, on payment of the mortgage-money, to convey the legal estate vested in the heir or devisee.

IX. That, when any person entitled to any freehold or copyhold land by way of mortgage has or shall have departed this life, and his executor or administrator is or shall be entitled to the money secured by the mortgage, and the legal estate in such land is or shall be vested in the heir or devisee of such mortgagee, or the heir, devisee, or other assign of such heir or devisee, and possession of the land shall not have been taken by virtue of the mortgage, nor any action or suit be depending, such executor or administrator shall have power, upon payment of the principal money and interest due to him on the said mortgage, to convey by deed or surrender (as the case may require) the legal estate which became vested in such heir or devisee; and such conveyance shall be as effectual as if the same had been made by any such heir or devisee, his heirs or assigns.

RECEIPTS OF TRUSTEES AND MORTGAGEES.

Receipts of trustees, and of the survivor or survivors of two or more mortgagees, to be effectual discharges.

X. That the bonâ fide payment to, and the receipt of, any person to whom any money shall be payable upon any express or implied trust, or for any limited purpose, or of the survivors or survivor of two or more mortgagees or holders, or the executors or administrators of such survivor, or their or his assigns, shall effectually discharge the person paying the same from seeing to the application, or being answerable for the misapplication thereof, unless the contrary shall be expressly declared by the instrument creating the trust or security.

INDENTING A DEED.

Indenting a deed unnecessary.

XI. That it shall not be necessary in any case to have a deed indented; and that any person not being a party to any deed may take an immediate benefit under it, in the same manner as he might under a deed poll.

and safest course, that the act should be wholly repealed, and the clauses of which the policy is unexceptionable be re-enacted in a different form.

"We are quite sensible of the difficulty and danger attending any attempt at legislation on

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RENT AND COVENANTS IN A LEASE.

The remedies for the rent and covenants in a lease not to be extinguished by the merger of the immediate reversion.

XII. That, where the reversion of any land, expectant on a lease, shall be merged in any remainder or other reversion or estate, the person entitled to the estate into which such reversion shall have merged, his heirs, executors, administrators, successors, and assigns, shall have and enjoy the like advantage, remedy, and benefit against the lessee, his heirs, successors, executors, administrators, and assigns, for non-payment of the rent, or for doing of waste or other forfeiture, or for not performing conditions, covenants, or agreements contained and expressed in his lease, demise, or grant, against the lessee, farmer, or grantee, his heirs, successors, executors, administrators, and assigns, as the person who would, for the time being, have been entitled to the mesne reversion which shall have merged, would or might have had and enjoyed if such reversion had not been merged.

COMMENCEMENT OF ACT.

Act to commence, except as to existing contingent remainders, from 31st Dec., 1844.

XIII. That this act shall commence and take effect from the thirty-first day of December, one thousand eight hundred and forty-four, and shall not extend to any deed, act, or thing executed or done, or (except so far as regards the provisions hereinbefore contained as to existing contingent remainders) to any estate, right, or interest created before the first day of January, one thousand eight hundred and forty-five.

EXTENSION OF ACT.

Act not to extend to Scotland.

XIV. That this act shall not extend to Scotland.

detached points of a complicated system, especially where the proposed changes tend to contradict principles on which that system is based; and we have, therefore, approached the subject not without considerable diffidence. The conviction that such partial remedies cannot be too cautiously applied, has induced us to review the act with the intention, first, of confining it to points which may safely admit of being thus separately treated, and secondly, of legislating upon those points with greater accuracy and perspicuity. But, although we have prepared the bill now submitted to your Lordship, after the merits and defects of the existing act had been amply discussed by the Profession, it is yet very possible that we may have failed, either to select for omission the objectionable portions only, or to enhance, by alterations in arrangement and expression, the practical value of the rest. The result, indeed, of some recent statutes has shewn that the most elaborate enactments differ from the least accurate only in the degree of help which they require from judicial exposition.

"There are two sections of the Transfer Act which it is proposed altogether to omit:—

"1*st*. The ninth section, enabling the executor or administrator of a mortgagee to convey the legal estate outstanding in his real representative.

"2*ndly*. The tenth section, enabling trustees and others to give discharges for monies.

"1*st*. As regards the ninth section, which provides for the conveyance of a mortgaged estate by the executor or administrator of the mortgagee, the design is good; but it is so imperfectly carried out by the very limited terms of the enactment, that practically the power is attended with very little real advantage. It is necessary, for the purposes of title, to ascertain that possession has not been taken, that no action or suit is pending, and that the legal estate is vested in the real representative of the mortgagee; for a mere negative allegation of these facts in the deed of conveyance would not satisfy a purchaser. But it is obvious that the necessity of proving these facts, and particularly the fact of the legal estate being vested in the real representative, (the very difficulty often being that the heir is unknown), destroys, in a great measure, the utility of the enactment. The clause, besides, authorises a conveyance only on actual payment to the executor or administrator of the whole debt;—not extending to a conveyance on part payment or a conveyance under any arrangement for exonerating the whole or part of the lands without payment, nor to cases where the money has been paid in the mortgagee's lifetime, or the executor has received the money at a former period, or has assented to a bequest of, or has assigned the debt. And, moreover, as the power—a bare statutory authority—is not conferred on the proving executor alone, it might be considered (though not,

we think, on a just view of the provision) necessary to its due execution, that an executor who had not proved, or had even renounced the probate, should join—a possible construction, which would not only narrow still further the range of the power, but probably implicate many titles depending on the contrary assumption. Another more material objection arises from the want of a precise definition of what shall, for the purposes of the act, be considered as falling within the term 'mortgage,'—a term which, taken according to its strict legal acceptation, would exclude a large proportion of the transactions comprehended under the popular meaning of that term, and clearly within the mischief sought to be remedied by the clause in question. Such a definition should, therefore, be given as would extend the benefit of the enactment to all cases where, according to the rules of a court of equity, a party is entitled to call for a conveyance of any property, pledged or charged as a security for money, on satisfaction of the debt; whether the security be in the form of a mortgage, to which the right of foreclosure is incident, or of a conveyance to the creditor or his trustee upon trust to sell, or in any other form whatever. Some method, too, more satisfactory than the use of such terms as 'his executor or administrator,' should be devised for ascertaining the person by whom, in every possible state of circumstances, the act is to be performed; for it is only by the expression of a rule of law in

general and comprehensive terms, that there can be any reasonable hope of attaining completeness or certainty. Then, as regards the principle involved in this section of the act, if it be fit that a mortgagee's executor or administrator (who, after being paid in full, has no further interest in the matter, and who, as he might, be it observed, have recovered the debt although unable to make or procure a re-conveyance of the estate, may refuse to exercise the statutory power, vested in him as a mere instrument for the convenience of others) should be enabled by his act to denude the heir or devisee of the legal estate and vest it in the mortgagor or his nominee, it must à fortiori be fit that the unpaid executor or administrator should be enabled to command the legal estate *for the purposes of the security* and the better administration of that portion of the assets of his testator or intestate. It can hardly be contended that the equity of the executor or administrator to have the full benefit of the unsatisfied and forfeited mortgage is not as strong and as urgent, at least, as the equity of the mortgagor to have the full benefit of the redemption. In each case the same principle applies; and that principle, fairly carried out, would require that every person entitled to call for the legal estate should be enabled to obtain it with as little difficulty and expense as may be consistent with safety to the rights of parties, and with the maintenance of the distinction between the jurisdictions of law and equity.

In the actual state of the law, there are three modes by which a party equitably entitled may get in the legal estate :—1*st*. By obtaining—often at a great expense—often on imperfect evidence, which leaves the title open to question—a conveyance from the party in whom the estate is actually vested, if competent and willing to convey it. 2*ndly*. In certain cases of incapacity, absence, or refusal, by the still more costly remedy of an order of the Court of Chancery, made on a summary application by petition, pursuant to the acts relating to infant trustees, &c.; but which application involves a reference to the Master, with all its consequences. 3*rdly*. In cases not within those acts, (which are crippled by many unnecessary exceptions), at a still greater expense, by means of a suit in equity regularly instituted. Now all the cases to which the above acts extend fall within the principle of the power in question enabling the executor or administrator of a mortgagee to convey; and that principle once admitted should be adopted to its fullest extent, unless it can be shewn that its general adoption would be productive of inconvenience. But if the general power were so framed as to make its exercise dependant on the fact of the right in equity to call for the legal estate being really in the party who makes the disposition, no undue advantage would be obtained, while the title would be relieved from the necessity which at present exists of proving that the legal estate is vested in the party by

whom (or by whose substitute) it is assumed to be conveyed. Having arrived at the conclusion that a free, yet well-considered application of the principle already admitted by the Legislature is of the very essence of a wise and just amendment of the law of real property, no attempt has been made to fit the existing clause to the particular case at which it is aimed. If, however, it should be deemed expedient to make a partial application of the principle—to amend the law by engrafting upon it an anomalous provision—the ninth section of the Transfer Act may be so modified as to attain more perfectly the very limited objects of its framers. Though these observations are applied to outstanding legal fees, yet the mischief extends to outstanding terms of years, which, notwithstanding all the remonstrances of the Profession and the practical examples afforded by every railway act of the summary abatement of those nuisances, remain to this day a fertile source of expense, difficulty, and delay, in the deduction of titles to real estate (*a*).

"2*ndly*. As regards the tenth section, which enacts that the payment to, and the receipt of, any person to whom any money shall be payable, on any express or implied trust, shall be a discharge, it is conceived that it never could have been in the contemplation of the framers of the act to render n equity the receipt of the person entitled at law

(*a*) See, however, now the act, 8 & 9 Vict. c. 112, infra.

under every trust whatsoever (whether merely implied or otherwise) an effectual discharge to the party paying. The effect of this new rule, if carried to its fullest extent, would be to alter essentially one of the most important principles of a court of equity. It is conceived that the rule was intended to remedy an inconvenience of a much narrower extent. In equity the person beneficially entitled is the person to concur in directing the payment to the trustee, except where the cestui que trust is unascertained or incompetent, or where there is some trust shewing that the trustee was to have the money at his disposal for a particular purpose, (as that of re-investment, &c.), or where there is an express declaration absolving the person paying from seeing to the disposition of the money. The rules as to the liability of a party paying money to a trustee, without the concurrence of the cestui que trust, to see the money duly applied, have varied, and are not yet precisely defined. To avoid any question, it has been usual to accompany a trust for sale, &c., with a declaration that the receipt of the trustee shall be a sufficient discharge. This occasionally is omitted, and thence a difficulty may arise, either in ascertaining whether the party paying is or is not bound to see to the ultimate disposition of the money, or in procuring the concurrence of the party entitled, who may be abroad, &c. The evil goes to this extent only; but the remedy is far more extensive, and is one which a very slight consideration will shew the danger of

adopting. There can be no question but that it would be desirable to supply a fit remedy, by carefully ascertaining the state of the law as regards any discrepancies or uncertainties, and removing them; and so to extend the rule as to obviate all practical inconvenience. Perhaps a rule which, with some modifications, should give every trustee having an express power to sell or raise money an authority to give a receipt for it, would be advisable. And such a rule would be consistent with the 30th Order in Chancery, which renders it unnecessary to make the cestui que trusts parties to a suit where there are trustees competent to sell and give receipts; but if the clause as it stands in the act were to remain, it would of necessity lead to an alteration of the practice; and in all cases where there was a trustee of money, under any trust direct or implied, it would become unnecessary to make the persons interested parties. The remainder of the section refers to the receipts of the survivors of mortgagees being effectual discharges. Similar objections apply to this branch of the clause. Trustees often lend money on mortgage, and take the security to themselves as joint tenants, not noticing the trusts in the deed; but generally there is inserted a declaration that the receipt of the survivor shall be a discharge, thus negativing the equitable tenancy in common. When this declaration is omitted, and a trustee dies, it becomes necessary to shew the trust of the money, and the power of the surviving trustees to give a receipt for it; and

this evidence becomes part of the mortgagor's title. It was to remove this inconvenience that the clause was framed; but it goes far beyond the evil in question, by making the receipts of the survivor of *all* mortgagees who are at law joint tenants sufficient. Now in practice many persons, not trustees, &c., take securities in joint tenancy; and it would seem very inexpedient thus to repeal generally the salutary equitable rule as regards these securities, and to allow the survivor to possess himself of the whole funds, without the concurrence of the representatives of the other equitable tenant in common. Supposing, however, that this part of the clause is retained, the expression of the rule in the statute being inaccurate, it would require considerable alteration.

"As these two sections involve great and extended alterations of the law, without supplying any complete or careful expression of the rules, it has been thought necessary to explain at length the reasons for omitting them from the proposed bill (*a*).

"In the preparation of this bill very little more has been attempted than a re-enactment, in terms more precise and apt, of the clauses of the existing act. If it had not been considered expedient to confine the present bill to a re-enactment of the clauses of that act, except as above stated, and if there had been sufficient time, it is conceived that much advantage might have been derived from

(*a*) The "proposed bill" referred to in this letter is now the act 8 & 9 Vict. c. 106, infra.

enactments which would remove many of the inconveniences arising from the present state of the law relating to the transfer of property. There are many points in addition to those relating to outstanding legal estates already adverted to, as to which enactments might be framed calculated to effect a great diminution of expense in tracing titles. The whole law relating to judgments is very confused and obscure; and the law relating to covenants might be altered with advantage. A reference to the reports of the Real Property Commissioners will fully prove that much yet remains to be done towards simplifying the transfer of, and removing various difficulties relating to the evidence of the title to real property.

"It is now proposed to add some observations on the remaining provisions of the Transfer Act, and some explanation of the views with which the provisions intended to be substituted by the proposed bill have been framed.

"As to sect. 2 of the Transfer Act, and also of the proposed bill. An oversight, to which we think undue importance has been attached, has rendered this clause a nullity for practical purposes. A doubt existed whether a lease or bargain and sale for a year, on which a release is founded, is chargeable with progressive stamp duty. The better opinion probably is, that the duty is not chargeable; but it had become the general practice to pay the progressive stamp duty. By the act

of the fourth of Victoria, cap. 21, dispensing with a lease for a year, it was provided that the release should be chargeable with the lease-for-a-year stamp duty, (other than the progressive duty), thus giving a kind of legislative sanction to the practice which had obtained. By the second section of the act of last session, a deed, which, without more, was thereby made to operate as a conveyance of the immediate freehold in land, was charged 'with the same stamp duty as would have been chargeable if such conveyance had been made by lease and release.' It was suggested, but we think erroneously, that this enactment required that the progressive duty which would have been chargeable on a lease for a year was chargeable upon the deed deriving its validity from the act; and this having been generally adopted, while there was no measure of the amount of such duty, (which depended on the length of an instrument which did not exist), it has become the general practice to entirely abandon this clause of the act, and accordingly conveyances to which it would have been applicable are now made under the Lease and Release Act of the fourth of Victoria. This section has been the subject of much criticism and discussion; and it must be admitted that it is not conceived or expressed with that attention to principle and that exactness which ought to characterise an enactment on the subject to which it relates. When it is said that 'any person may convey by any deed, without livery of seisin or inrolment, or

a prior lease,' it seems to be assumed that there is in law some standard instrument by which, with the addition of any of the above concomitants, the immediate freehold in lands may be conveyed; but there is, in fact, no such instrument in law. There are (besides a covenant to stand seised) three several assurances adapted to convey it, viz. feoffment, bargain and sale inrolled, and lease and release, all founded on different principles, differing in their modus operandi, and having an important difference in their effects. If the deed of conveyance established by the Transfer Act be a new statutory assurance, which is neither a feoffment, nor a bargain and sale, nor a lease and release, it is merely nugatory to provide that such assurance shall be effectual 'without livery of seisin, inrolment, or prior lease,' for the forms or solemnities in question have not the slightest significance with reference to such a conveyance: while if, on the other hand, it be considered that the framers did not intend to introduce any new assurance, but only to exempt the existing assurances from useless and troublesome forms, the inattention to principle in the structure of the section is equally apparent; for it is not clear that it would not be necessary to attribute to the assurance the character either of a feoffment without livery, or a bargain and sale without inrolment, or a release without a lease for a year, and there seem to be no means of ascertaining to which of the three kinds of assurance the conveyance under the act

would belong. The only point on which the act can be pronounced clear is, that the assurance, if a bargain and sale, shall operate by transmutation of possession, that is, have the like effect in transferring the legal seisin as a common-law assurance would have had, contravening in this respect an established construction of the Statute of Uses, without any other necessity than that which is imposed by the form of the enactment. A further objection is, that it seems to be assumed that livery of seisin has the same reference to a charter of feoffment which inrolment has to a bargain and sale, the fact being that livery of seisin is the essence of a feoffment of which the charter is only the evidence, while the bargain and sale is *the* assurance to the efficacy of which the form of inrolment was made necessary by a subsequent statute. The general object of sect. 2 of the proposed bill is the same with that of the corresponding section of the Transfer Act; namely, to give to all freehold lands in possession the capacity of being transferred without any of those forms or solemnities which occasion expense and trouble, but have no essential connexion with the act of transfer. A large class of freehold hereditaments is, by the existing law, and has, from the remotest antiquity, been, invested with this capacity to the extent of being transferable by the observance only of those forms or solemnities which are included in the execution of an ordinary deed. The hereditaments so circumstanced are

technically said to lie in grant, while the hereditaments to which the law has hitherto denied the capacity of being transferred by deed are technically said to lie in livery. It has never been proposed that the class of property with which this section deals should be made transferable by any mode less formal than a deed. We have therefore considered that the most direct and the most simple means of obtaining the object proposed is, to impart to *corporeal* hereditaments, that is, to hereditaments which lie in livery only, the capacity of being transferred by deed, by providing, that, 'as regards the conveyance of the immediate freehold thereof,' they 'shall be deemed to lie in grant as well as in livery.' The effect of the clause will be to render a reference to the Lease and Release Act of the 4 & 5 Vict. c. 21, unnecessary in the case of corporeal hereditaments in England, and to dispense with a reference to or recital of a lease for a year in the case of corporeal hereditaments in Ireland.

"As to sects. 3 and 4 of the Transfer Act, and sect. 3 of the proposed bill. The third section of the bill consolidates the third and fourth sections of the act, and extends the requirement of a deed to the case of a feoffment. It is apprehended that when the solemnity of a deed was required for the transactions to which these sections apply, the case of a feoffment was not advisedly omitted. An exception is necessarily introduced as to a customary feoffment by an infant.

As the cases of such feoffment are local and rare, and the power of making them at all of doubtful expediency, and at variance with the policy of the general law, it did not seem advisable to remove the personal incapacity of the infant so as to enable him to make a deed. The power for an infant of a certain age to make a feoffment exists only under the custom of gavelkind; and should any change be made in the law on this subject, it would perhaps be better to take away the power of making such feoffments, than to attempt improvements in the mode of making them.

"As to sects. 6 and 7 of the Transfer Act, and sect. 4 of the proposed bill. The fourth section of the bill consolidates the sixth and seventh sections of the act. The omission from the act of the word 'give' (which has the like effect in implying a warranty or covenant in law, or indeed a surer effect for that purpose than the word 'grant') was probably an oversight. The like observation applies to the omission of 'partition,' which is, to a considerable extent, in the same predicament, with respect to the implication of a warranty or condition in law, as an exchange. The doctrine is not so prominently called into notice in the case of partition as in the case of exchange, because in the great majority of instances the undivided share which a co-tenant gives up in one portion of the land is held under the same title with the undivided share which he retains in the portion which he takes in severalty;

and thus, in dealing with property taken in severalty on a partition, the investigation of the title to the undivided share given up occasions no additional expense or trouble, being in fact involved in the investigation of the title to the undivided share retained. But though the practical inconvenience of the implied condition is less in the case of partition than in the case of exchange, yet, as the inconvenience is the same in kind, and the principle identical, it would be absurd in a legislative measure to provide for the one case and to omit the other. It is perhaps unnecessary to observe that the seventh section of the act, which declares 'that no assurance shall create any estate by wrong, or have any other effect than the same would have if it were to take effect as a release, surrender, grant, lease, bargain and sale, or covenant to stand seised,' has been understood by some persons to deny effect to an assurance made by way of appointment, and consequently that this construction has occasioned some alarm to parties having powers of appointment equivalent, in point of dominion, to the fee, but having no power of alienation otherwise than by an exercise of their power.

"As to sect. 11 of the Transfer Act, and sect. 5 of the proposed bill. The first branch of the eleventh section of the act, declaring 'that it shall not be necessary in any case to have a deed indented,' appears open to the objection of ambiguity; as, first, it may mean that the act or

ceremony of indenting need not be performed on the material on which the intended instrument is written, &c., and this meaning is in accordance with the marginal note, but then such note is not part of the act, and cannot be used to construe it; or, secondly, it may be merely descriptive, and mean that it shall not be necessary in any case to have an indenture. The terms descriptive of an indenture in the Statute of Inrolments (27 Henry 8, c. 16) are, 'a writing indented, sealed, and inrolled in' &c. It must be borne in mind that the mode of conveyance by bargain and sale inrolled has not been expressly abolished. Now, suppose the true construction of this enactment to be the construction first suggested, and so to render the act of indenting unnecessary, then the bargain and sale will necessarily be a writing sealed and inrolled according to the Statute of Inrolments, also signed in those cases in which signature has been rendered necessary, but not subjected to the act or ceremony of indenting: on the other hand, suppose the other construction of this enactment to be the correct one, viz. that it shall not be necessary in any case to have an indenture, then this enactment is virtually an abolition of the mode of conveyance by bargain and sale, for the enactment is *negative*, and the form of a statutable bargain and sale of a freehold interest would be unascertained and unascertainable. The second branch of the eleventh section of the act declares that any person not

being a party to any deed ['not party to *any deed whatsoever*' is the literal expression, though obviously not the real meaning] may take an immediate benefit under it [there really is not anything to which this pronoun *it* relates], in the same manner as he might under a *deed-poll*. The few words interposed and bracketed in the preceding statement indicate some terms and expressions which are very open to critical objection, though not unintelligible. But the real and strong objection to this second branch of the eleventh section is, that it has not been framed with sufficient regard to the qualities of precision and caution. The general rule intended to be thereby varied may be stated thus; viz. 'that a person cannot, under an indenture purporting to be between parties, be immediate grantee or be a covenantee, unless such person be expressly named among the parties.' The defect intended to be cured was the omission to name the immediate grantee or the covenantee among the parties to the indenture, and the most obvious and sure mode was to enact that the deed should operate in regard to him as if he had been named among the parties; but the enactment in question gives the indenture effect by reference to a deed-poll. Now the effect of the *indenture*, supposing that every person intended to be immediate grantee or to be covenantee had been properly named among the parties, either would be the same as the effect of a *deed-poll*, with respect to the immediate

grant or the covenant in question, or else would be different. If the same, then there is a useless circuity of language and thought; but if different in any possible case, then there is error. It is sufficient to mention the subject of estoppel as one in which the effect of an indenture differs from the effect of a deed-poll. We propose by the fifth section of the bill to effect, in a manner which we hope to be both clear and safe, only that which we suppose to have been the real meaning of the eleventh section of the act.

"As to sect. 5 of the Transfer Act, and sect. 6 of the proposed bill. The sixth section of the bill differs (besides the differences in form) from the fifth section of the act in the following particulars:— Personal chattels are omitted, because contingent interests in such chattels, being almost invariably equitable, are already assignable in the only way in which, from the nature of the subjects, they are susceptible of assignment. In fact there seems to be no subject upon which an enactment giving a power to assign a legal contingent interest in personal chattels could operate. Had the case been otherwise, we should not have considered it consistent with exact or methodical legislation to mix up a detached point as to personal chattels in an act relating to the transfer of real estates. With respect to married women the existing act makes no distinct provision, and the general enactment, that any person may convey, &c. 'by deed,' could not have been intended to

enable married women to convey contingent interests without an observance of the provisions respecting conveyances by married women of the Statute for the Abolition of Fines and Recoveries. We consider that a question might arise whether married women are included under this section, and if included whether their conveyances would not be effectual without a compliance with the provisions of the above statute. We have therefore directed in express terms that dispositions by married women under the sixth section of the proposed bill should conform to those provisions. As the proposed enactment would not upon any reasonable construction extend to the expectancies of heirs apparent or next of kin, or hoped-for advantages from unexecuted instruments or the wills of living persons, we have abstained from making an express exception of these matters; the addition of the exception would necessarily render obscure the meaning of the positive enactment, while we think that no obscurity will exist unless introduced by this needless addition. We are not sure that we see the object of the provision in the fifth section of the act, that no chose in action shall be assignable at law. Such a qualification is unnecessary in the enactment which we propose to substitute, and indeed would be wholly irrelevant. As the twenty-second section of the Statute (4 & 5 Will. 4, c. 92) for the Abolition of Fines and Recoveries in Ireland has provided, in terms somewhat different, for the conveyance of contingent interests,

we have deemed it advisable to confine the sixth section of the proposed bill to England. The terms of the enactment for Ireland have not been pursued, because it appears to be so framed as to enable the original taker of a contingent interest to convey it, but not to confer on his assignee a similar power. It is not, perhaps, clear that the fifth section of the Transfer Act is not open to the same objection.

"As to sect. 7 of the proposed bill. This provision is new, as regards lands in England, and has been added to supply the omission, which is understood to have been attended with some practical inconvenience, of the case of disclaimer from the English Fines and Recoveries Act, and to render uniform, in this respect, the laws of England and Ireland.

"As to sect. 8 of the Transfer Act, and also of the proposed bill. The 8th sect. of the act would seem to have had three objects:—1*st*. To preclude the creation, after the 31st December, 1844, of contingent limitations liable, under the doctrine relating to contingent remainders, to be defeated by the premature failure of the particular estate; 2*ndly*. To enlarge the scope of such contingent limitations, created after the 31st December, 1844, as would be liable, under the doctrine of contingent remainders, to be defeated by the failure, even at maturity, of the particular estate; 3*rdly*. To preserve contingent remainders, created before the 1st January, 1845, from being defeated

by the premature failure of the particular estate. Of these objects, the first and second are sought to be effected by enacting, in substance, that all limitations created after the 31st December, 1844, which, according to the pre-existing law, would be contingent remainders, shall operate as executory devises or uses, with all the properties of such a devise or use.

"1. As a contingent devise or use, though by way of remainder, is necessarily unexecuted, (while an executory devise or use is not necessarily contingent), the term 'executory' does not, in strictness, ascertain the peculiar species of limitation with which, by this enactment, all contingent remainders, whether created at the common law or by way of use or devise, are intended to be identified. The executory devise or estate to which reference is intended to be made is, of course, a contingent devise or use, so limited as to be incapable of taking effect as a remainder; and the true interpretation, therefore, of the enactment is, that 'a contingent limitation by way of remainder, whether created at the common law, or under the Statute of Uses, or by devise, shall take effect in the very same manner as a contingent use or devise not limited by way of remainder.' Now, in order to satisfy the terms of this enactment, it appears to be necessary that we should, in the first place, apply the learning of contingent remainders, for the purpose of ascertaining whether the given limitation would, under the old law,

have taken effect as a contingent remainder or not; and, in the next place, apply the learning of executory devises or uses, for the purpose of inventing an hypothesis adequate to give that limitation all the effect of an executory devise or use. And we must, if possible, so work out this process as that, while we attribute to the limitation (for this the enactment expressly requires) all the peculiar qualities of an executory devise or use, none of the beneficial properties which the same limitation, taking effect as a remainder, would have possessed, may be sacrificed. But, having ascertained that the given limitation would have been valid as a contingent remainder, then, as it is of the very essence of an executory devise or use to have (in contradistinction to a remainder) a substantive self-dependent existence, and to be incapable of taking effect as a remainder, we are compelled to disconnect the limitation, in construction or supposition of law, from the particular estate. If we take the common case of a settlement to the use of A. for life, and from and after his death to the use of his first and other sons successively in tail, and suppose the life estate to have been created by one instrument, and the fee to have been limited by another instrument (subject to the life estate) to the use of the first and other sons of A. in tail, the limitation to the sons might take effect, out of the reversion in fee, as an executory use, and yet confer, on the birth of a son, and in the lifetime of A., a vested estate tail; so that, in

the case supposed, the limitation would, while in suspense, be wholly independent of the life estate, and of course unaffected by its premature determination, but yet be capable of conferring, on the happening of the contingency, all the advantages of a vested remainder. This hypothesis is, however, inadmissible, for, in the state of circumstances supposed, (the limitations arising under different instruments), the limitation to the sons would *not* have taken effect as a contingent remainder, nor consequently would it be within the purview of the eighth section of the Transfer Act. We are therefore reduced to the necessity of taking the limitations of the settlement as they stand expressed in one and the same instrument; first viewing them in the relation of particular estate and remainders, in order to raise the case contemplated by the act; then detaching, in construction, the limitation to the sons from the limitation to A., and reading the limitation to the sons as a substantive limitation 'from and after the death of A., to the use of his first and other sons successively' in tail. Now, assuming this to be the only process by which a limitation, required to have at once the distinctive characteristics of a contingent remainder and all the essential qualities of an executory devise or use, can be conceived to partake of such opposite natures, we are met by the difficulty of shewing either that, consistently with the doctrine of executory limitations, the limitation to the sons, so construed, is

capable of conferring a vested estate on the birth of a son living A.; or that, if it be not so capable, no practical inconvenience can result from its retaining, until the death of A., all the properties of an executory devise or use. On the one hand, it might be objected that the limitation, if considered as capable of vesting in the lifetime of A., would really take effect agreeably to the known laws of a contingent remainder, and contrary to the known laws of an executory devise or use, in direct opposition, therefore, to the express enactment of the statute; on the other, that, unless the limitation were considered as capable of vesting in the lifetime of A., this method of protecting contingent remainders would induce serious practical evils. In support of the former objection, the authority of an eminent text writer might be cited to shew that a limitation, 'from and after the death of A., to the use of his first and other sons,' taking effect otherwise than as a remainder, would not, until the death of A., give a vested estate, but that a son of A. in esse would, living A., 'have no estate; the limitation would be executory, and confer on him and his heirs a certain fixed right to an estate in possession at a future period.' (Butl. Fearne, Cont. Rem. 1, n. (*a*)). It may be contended, perhaps, that, as a limitation, which is, in its inception, an executory devise or use, may eventually take effect as a remainder, so the limitation in question may, during the suspense of the contingency, be an exe-

cutory use, and, on the happening of the contingency, vest as a remainder; but the enactment is express, that the limitation shall take effect as an executory devise or estate, (i. e. use), and seems to impose the necessity of discovering some mode in which it may vest *contrary to* the common-law doctrine of remainders. In support of the latter objection, it might be argued, that, as a common recovery could not have been suffered with effect by the owner of an executory estate tail, (1 Prest. Con. 6), so, under the Statute for the Abolition of Fines and Recoveries, a disentailing assurance, the substitute of a common recovery, cannot be executed with effect by such an owner; for the learned writer last cited was of opinion that 'the new act (3 & 4 Will. 4, c. 74) has not given, in this respect, more power of alienation than existed before the act;' and it is understood that another conveyancer, of whose great experience and skill we have been recently deprived, also felt difficulties as to the applicability of the same statute to contingent and executory interests. It is hardly necessary to advert to the consequences of even a respectable doubt upon a point of this nature,—to the importance of its being *absolutely clear* that a first son, on attaining his majority, may be in a position to concur with his father in making an effectual re-settlement of the family estates. Nor, if it were clear that the executory limitation in tail might be enlarged into an executory limitation in fee, would the objection be entirely disposed of, unless it were considered, that, under the fifth

section of the Transfer Act, this executory fee would, for all the ordinary purposes of conveyancing, be equivalent to a vested remainder in fee. As the learned writer last cited denies the applicability of the rule in *Shelley's case* to an executory limitation, (Prest. Succinct View), it may even be made a question whether the enactment under consideration does not involve a summary abrogation of that rule. Though it is very possible that the questions to which this enactment appears to be open might be so settled, by judicial construction, as to render it effective, yet, as that result might not be attained without a long course of litigation, (giving occasion, perhaps, to as many theories and fictions as the construction of the Statute of Uses bred with reference to contingent uses), and as, in the interval, titles affected by the enactment would be in a state far from satisfactory, it is submitted to your Lordship, that so much, at least, of the eighth section of the Transfer Act as attempts the assimilation of contingent remainders to a class of limitations to which they have been hitherto always put in direct contradistinction, ought to be repealed retrospectively; care being taken, of course, to afford protection to all limitations which, by the effect of such repeal, would acquire ab initio the legitimate character of contingent remainders. This precaution being adopted, the retrospective repeal cannot work any possible injury; while, to leave in existence a set of anomalous limitations, anomalous, not in their own nature, and on the

face of the instrument, (for they would *there* appear in the legitimate form of remainders), but because created under the brief influence of an abrogated law, would tend only to embarrass titles, and to mislead the practitioner.

" 2. But the enactment in question was framed with a larger view than that of merely preventing the technical destruction (as it may be termed) of contingent remainders (created after the 31st December, 1844) by the premature determination of the particular estate. The expedient of transmuting contingent remainders into executory limitations was not adopted without a reasonable object, an object, indeed, which on the first impression may seem to require the substitution of a provision at least equally comprehensive. As ordinarily a contingent remainder to unborn issue is limited to the immediate issue of the particular tenant for life, (ex. gr. to A. for life, remainder to his unborn children in tail), so that the contingency must happen, if it happen at all, in his lifetime, a statutory provision, though confined to the protection of contingent remainders against the acts of the particular tenant, would yet embrace the great majority of cases. Still cases do not unfrequently occur, (ex. gr. the case of a limitation to A. for life, remainder to the unborn children of B. in tail), in which a stronger provision is requisite, in order to prevent the natural expiration of the particular estate from eventually disappointing all or some of the objects of the contingent remainder,

(ex. gr. children of B. born after the death of A.) This view of the subject has engaged our attention, and it is not without full discussion and mature consideration that we have rejected the arguments which it supplies in favour of the existing enactment. The grounds of our opinion against the expediency of attempting more, at present, than simply to place contingent remainders beyond the reach of accidents occurring to the particular estate, are chiefly these:—1. That, admitting the law to be, as regards the cases in question, defective, the mischief is not peculiar to contingent remainders, but, in some degree, at least, affects generally future gifts to classes of personal, as well as of real estate. Thus, if personal estate be limited to A. for life, and after his death to the children of B., and if B. survive A., and have children, some born before, some after A.'s death, the after-born children are excluded; for, though, if there be no child of B. born before A.'s death, the gift will open from time to time to let in all the after-born children, yet, if there be a child antecedently born, then, on A.'s death, the gift finally closes. And the same rule applies to even an executory bequest, so that if personal estate be bequeathed to A., with a bequest over, in the event of his death under twenty-one, to the children of B., children born before the happening of the contingency take in exclusion of after-born children. Such, at least, is the effect of the rules which govern the construction of gifts to classes, as those

rules are propounded by text writers of authority. 2. That the question as to the adequacy of an equitable limitation, in the nature of a contingent remainder, to embrace a larger class than that which would be entitled to take under a corresponding legal limitation, does not appear to be perfectly settled, but ought not to be disregarded in any legislative alteration of this branch of the law. 3. That, in the above example of a contingent remainder to the children of B., the utmost effect of transmuting it (if that were practicable) into an executory limitation would be to let in the after-born children, in the event, and only in the event, of the non-existence of any other object entitled under the limitation; but to touch the general doctrine, which ascertains the class with reference to the period of distribution, without rendering the gift capable of embracing, in *all* events, *all* the intended objects, would be to tamper with legal rules, without satisfying any moral principle. In short, we were apprehensive, that, by extending our views beyond the correction of a mischievous rule of tenure, to the consequences, in any case, of the *natural* determination of the particular estate, we should open a very wide field, comprehending all gifts, of all kinds of property, to unascertained classes,—a field on which it would not be prudent to enter, without more preparation and a more extensive discretion than consisted with the particular duty devolved upon us.

"3. In favour of the remaining object of the

eighth section of the Transfer Act—that of preserving contingent remainders from the consequences, under the rules of tenure, of the premature failure of the particular estate—even the most cautious of judges had long since pronounced a strong opinion, and the removal of this reproach upon the law had been contemplated at a former period. Simple and obvious as the remedy may appear, yet there is, in truth, considerable difficulty in framing an enactment which, without changing the rules of tenure, seeks to exclude particular cases from the natural and necessary operation of those rules. We have deemed it advisable not to rely on the simple negative of the Transfer Act, ('shall not fail,' &c.), but to indicate by an affirmative declaration the mode in which the limitation, deprived of its natural support—the particular estate—shall take effect; and, with this guide to the construction of the clause, it must be left to the judicature to work out the intention of the Legislature. We have thought it better to extend the proposed retrospective repeal to the whole of the eighth section of the Transfer Act, and by the corresponding section of the bill to protect contingent remainders as from the 31st December, 1844. The language ('as from the commencement and taking effect thereof') adopted in that portion of the first section of the proposed bill which relates to this retrospective repeal is used in order to settle a question which has arisen, whether the protection of the concluding branch

of sect. 8, construed with reference to sect. 13, extends over the interval between the passing of the act and the 1st January, 1845.

" As to sect. 12 of the Transfer Act, and sect. 9 of the proposed bill. This section of the act is even less perfectly expressed than any of the other sections. The case (one of not unfrequent occurrence) of the merger of the reversion in a particular estate which is itself subsequently merged is omitted. And while the benefit arising from the obligations of the lessee are annexed to the estate for the time being expectant on the lease, notwithstanding the merger of the particular reversion originally expectant thereon, there is no corresponding annexation to the same estate of the obligations of the lessor. These omissions would have rendered the repeal of this particular section necessary, even had no other alteration in the act been required. The language of the section seems to be taken, to a considerable extent, from the act of the 32 Hen. 8, c. 34; but a degree of inaccuracy pervades the whole, for which it is difficult to account. The section begins by speaking of 'a lease;' subsequently the same interest is called 'his lease, demise, or grant,' being the language of the act of Henry VIII. It is provided, that the person entitled to the estate into (in) which a reversion shall merge shall enjoy the like advantage, &c. against the 'lessee, his heirs, successors, executors, administrators, and assigns,' for non-payment of rent, &c., contained 'in his lease,

demise, or grant, *against the lessee, farmer, or grantee, his heirs, successors, executors, administrators, and assigns,*' the latter words, 'lessee, farmer,' &c., (being again the language of the act of Henry VIII.), relating precisely to the same subject before expressed by the single word 'lessee,' and being moreover a repetition. But the words are not merely a repetition,—a mere surplusage in point of expression,—nor are they as innoxious as two wholly irrelevant lines inserted at random would be; for the omission of the words the 'lessee, his heirs,' &c., would have made the words in italics significant, if not correct, and the omission of the words in italics would also have left the clause comparatively right. But the insertion of both, while one must be rejected before the clause becomes even language, and the expression of each in words wholly differing, though manifestly intended to relate to the same subject, and the absence of any guide to shew which is to be rejected, produce a degree of embarrassment which would alone furnish a reasonable excuse for the repeal of this section.

"As to sect. 13 of the Transfer Act. It is not clear what the effect would be of the provision that the act should not extend to 'any act or thing executed or done before the 1st of January, one thousand eight hundred and forty-five,' and there is little doubt that these words would be the source of much discussion; but the provision that the act shall not extend to any 'estate, right, or interest

created before the 1st of January, one thousand eight hundred and forty-five,' has already received a practical exposition in the generally adopted opinion, that the act has no application to any estate tail, estate for life, or other particular estate, or to any lease existing at the commencement of the act, or, so far as the power of alienation is concerned, to any contingent or future interest created before that date. This is wholly unreasonable ; and an undistinguishing withdrawal from the presumable benefits of the act of a large class of interests which have the first claim to be attended to in any legislative measure, could not have been intended ; and even had no other alteration been required, yet in this particular an amendment of the act would have been absolutely necessary.

"I have the honour to remain

"Your Lordship's obedient Servant,

"H. BELLENDEN KER.

"LINCOLN'S INN,
28*th April*, 1845."

OBSERVATIONS

ON

THE ACT 8 & 9 VICT. CAP. 106 (*a*).

IT is a great merit in this act that it contains no definitions extending the meaning of words beyond their ordinary acceptation. Such definitions are useful when they shorten an act, and simplify its expressions; but they have been introduced in many acts not longer than this, in which they obviously lengthen and embarrass, instead of shortening and simplifying. They are also frequently misapplied, by declaring that one word shall mean exactly what another already means, as that "land" shall mean what "hereditaments" means (*b*).

In the act now before us, "tenements and hereditaments" are used in their common and well-known sense, viz. that of all property which can be holden or is inheritable. The word "tenements"

(*a*) See the Act, infra, p. 81.

(*b*) See, for instance, the act for extinguishing attendant terms, 8 & 9 Vict. c. 112, infra, which is an instance of both these mistakes.

is, however, superfluous, for every tenement is necessarily a hereditament (*a*).

Repeal of the Act to simplify the Transfer of Property, 7 & 8 Vict. c. 76.

SECTION 1.—The effect of repealing ab initio that part of the Act to simplify the Transfer of Property, which converted contingent remainders into executory devises, or executory estates in the nature of executory devises, will be, to remove these anomalous estates altogether from titles, and to render unnecessary the investigation of their nature and properties. The contingent remainders, which, from their creation, after the 1st January, 1845, were executory devises or estates by force of the Transfer Act, are now made contingent remainders from the beginning, as they would have been if that act had never passed. The provision, too, of the Transfer Act as to the failure or destruction of contingent remainders is repealed ab initio, but, by the 8th section of the present act, a contingent remainder created before the passing of the present act, and existing at any time after the 31st of December, 1844, is protected from failing on account of the determination of any preceding estate of freehold, by forfeiture, surrender, or merger; but that part of the Transfer Act which protects contingent remainders existing on the 31st of December, 1844, from failing by reason of the determination of the preceding estate by any other means than the natural effluxion of the time of

(*a*) Co. Litt. 6. a.; 2 Bl. Comm. 17.

such preceding estate, or some event on which it was in its creation limited to determine, is not re-enacted.

It does not appear, however, that there are any means by which a contingent remainder can fail, except the forfeiture, surrender, or merger, of the preceding estate, or its determination by the natural effluxion of time, or some event on which it was in its creation limited to determine; and, in the two latter cases, it is allowed, by both the Transfer Act and the present act, to fail according to the ancient rule of law. See further on this subject, Mr. Bellenden Ker's Letter, supra, pp. 36 et seq., and infra, p. 70.

The remainder of the Transfer Act is repealed only from the 1st of October, 1845: so that, as to instruments executed between the 1st of January and the 1st of October, 1845, that act will still have to be consulted. It is believed, however, that very few drafts were framed on the faith of it; and it will, probably, be little heard of hereafter. The clause providing that the receipts of trustees and of the survivors of mortgagees shall be discharges has, it is understood, been occasionally omitted in reliance on the Transfer Act; and it may, therefore, be found needful, in some cases, to see if that act will make good the omission. The defects of the clause were pointed out in the former edition of this work, and are stated in Mr. Bellenden Ker's Letter, supra, pp. 21—24. It is not probable that any convey-

ances have been taken from executors of mortgagees under the Transfer Act; the provisions on that point (as pointed out in the former edition and in Mr. Bellenden Ker's Letter, supra, pp. 17—21) were so framed as to render it almost impossible. The reasons for omitting in the present act the provisions as to the receipts of trustees and mortgagees, and as to conveyances from executors of mortgagees, are mentioned in Mr. Bellenden Ker's Letter, supra, pp. 17—24.

With the exceptions above adverted to, the objects of the Transfer Act are those also of the present act, but they are now effected by enactments which appear to be free from the numerous objections to which the Transfer Act was open.

Ancient distinction between estates lying in livery and in grant.

SECTION 2.—According to the well-known rule of law, the immediate freehold of all corporeal hereditaments lay in livery, that is to say, passed at common law by feoffment, with livery of seisin or corporal tradition, to which, from very early times, a deed or charter of feoffment was added as evidence of the feoffment. In modern practice, the deed of feoffment became the principal instrument of the conveyance, and the livery of seisin a ceremony needful to perfect it. Reversions and remainders in corporeal hereditaments, and all incorporeal hereditaments (*a*), whether in possession

(*a*) The reversion or remainder of a corporeal hereditament is in truth an incorporeal hereditament, but the distinction in the text is useful for the present purpose.

or reversion, have always lain in grant, i. e. have passed by the delivery of the deed of conveyance or grant without any further ceremony, except that, as to seigniories and reversions and remainders of corporeal hereditaments, the attornment of the tenant was necessary till abolished by the stat. 4 & 5 Anne, c. 16. The great inconvenience of the livery of seisin required to perfect a feoffment, and the difficulty in many cases of giving it properly, (4 Cru. Dig., by White, p. 47), introduced various other modes, founded on the Statute of Uses, of conveying the immediate freehold of corporeal hereditaments, all of which, except one, were very limited, and generally inconvenient in their application. The exception was the conveyance by lease and release, which long since became, and has till lately continued to be, the ordinary mode of conveying the immediate freehold of corporeal hereditaments, and has, from abundant caution, been also generally used for the conveyance of reversions and remainders, and even of equitable estates in corporeal hereditaments. This mode of conveyance has, since 1841, been almost completely superseded in England by a conveyance founded on the act of the 4 & 5 Vict. c. 21, called, "An Act for rendering a Release as effectual for the Conveyance of Freehold Estates as a Lease and Release by the same Parties," and which substitutes a reference to the act, coupled with the imposition of an extra deed stamp, for a lease for a year. It having, however, been con-

Conveyance by lease and release.

Conveyance under the statute 4 & 5 Vict. c. 21.

sidered that a corporation could not stand seised to a use, it followed that a corporation could not convey by a common lease and release, because the lease was in fact a bargain and sale for a year operating under the Statute of Uses; and the above act being so worded as merely to imply the execution of the lease for a year, and not the actual entry, which was required to make good the lease, if made by a corporation, corporations have continued to convey by feoffment with livery of seisin since the act, as they did before. In Ireland the recital in a release of a lease for a year was made full evidence thereof by the Irish statute, 9 Geo. 2, c. 5; and, since that time, the actual execution of a lease for a year of Irish land has been dispensed with. Lately, however, by the statute 5 & 6 Vict. c. 82, continued by the 8 & 9 Vict. c. 2, and by the 11 & 12 Vict. c. 9, an Irish release reciting a lease for a year has been subjected to the stamp duty (except progressive duty) payable for the lease for a year, as in England.

Irish Lease for a Year Act, 9 G. 2, c. 5.

The Act to simplify the Transfer of Property provided, (sect. 2), "that every person" (defined to include a corporation) "might convey by any deed, without livery of seisin or inrolment or a prior lease, all such freehold land as he might before the passing of that act have conveyed by lease and release, and that every such conveyance should take effect as if it had been made by lease and release: Provided always, that every such deed should be chargeable with the same stamp duty

The Act to simplify the Transfer of Property.

as would have been chargeable if such conveyance had been made by lease and release." Against this provision a good deal of unfounded cavilling arose, but in practice it became a dead letter, from the uncertainty whether (as was expressly provided in the 4 & 5 Vict. c. 21) only the first stamp on the lease for a year was chargeable, or whether progressive duty was also payable. The Author's opinion (see the first edition of this Work) was, that progressive duty was not payable; but the consequence of the doubt was, that, up to the passing of the new act, conveyances continued to refer to the Lease and Release Act in England, and in Ireland to the Lease-for-a-Year Act, and corporations continued to convey by feoffment with livery of seisin (*a*).

Conveyances under the new act.

The new act puts an end to the necessity of using any of the above modes of conveyance, either in England or Ireland, by enacting that "all corporeal tenements and hereditaments shall, as regards the immediate freehold thereof, be deemed to lie in grant as well as in livery;" that is to say, shall pass by the delivery of the deed of conveyance, as incorporeal hereditaments and the reversions and remainders of corporeal hereditaments heretofore have passed. Every deed, however, which is to operate as a grant by force only of this enactment must be stamped with an additional stamp of the same amount as the first,

(*a*) See further on this subject, supra, pp. 25 et seq.

or only stamp which the lease for a year would have borne, and which, in all cases, except conveyances upon sales and mortgages for less than £150, is 1*l.* 15*s.*; but the imposition of the progressive stamp duty, which the lease for a year would have borne, is expressly negatived.

In every respect, except the provision as to the stamp, this enactment appears admirably to meet the desideratum of enabling corporeal hereditaments in possession to be conveyed by a single deed; for it introduces no new form of conveyance, but simply renders the estates hitherto conveyed by lease and release, or feoffment with livery, capable of being conveyed by "grant;" a mode of assurance as old as the law itself, and the nature and properties of which are perfectly well known and settled. At the same time, the effect which the word "grant" has been sometimes supposed to have, of implying a covenant in law, is taken away by the 4th section, so that there can be no objection to any person conveying by that word; and, from its convenience and propriety, it will gradually become the universal and only operative word employed in conveyances of real estate, though, of course, any word expressive of the intention to pass the estate will be effectual.

Injurious effect of the provision as to the additional stamp duty on grants under this act.

No blame can be imputed to the gentlemen by whom the act was framed for the insertion of the provision as to the stamp duty, as that provision was required by the Chancellor of the Exchequer; but its effects in preventing the simplification of

the law is most mischievous. For, though in future all estates in corporeal hereditaments and all incorporeal hereditaments may be conveyed by one and the same form of deed, yet the conveyancer will have to determine, on every conveyance of corporeal hereditaments, whether the estate conveyed would heretofore have required a lease and release or not, for the purpose of determining whether the extra stamp must or must not be imposed. It has been customary to convey reversions and remainders in corporeal hereditaments by lease and release, in order to guard against the possibility of the particular estate having determined, and to preclude the necessity of shewing afterwards, as a matter of title, that it had not determined; and, for the same reasons, it will probably be better henceforth to stamp conveyances of such reversions and remainders with the extra stamp. It has also been usual to convey equities of redemption and other equitable estates by lease and release, even when it was clear that the legal estate was outstanding, and that, as a matter of title, it must appear to have been so; but there seems no sufficient reason for this practice, and probably, therefore, in future, conveyances of equitable estates will not be stamped with the extra stamp.

Whether Corporations can convey under this act.

A doubt has been raised whether corporations can convey by grant operating under this act, by reason that the Stamp Act (55 Geo. 3, c. 184) in imposing the duty on a "bargain and sale (or lease) for a year," from subsequently employing

the expressions "bargainee" alone may have contemplated only a bargain and sale, and not a common-law lease, and that therefore the new act, in referring to a lease for a year bearing stamp duty as such, must be taken to refer to a bargain and sale only, and not to a common-law lease; and that, therefore, a corporation cannot convey under this act. The doubt, however, has not been generally countenanced.

Tenants in tail, and married women may convey under this act.

It is hardly necessary to say, that a conveyance under this act, if duly inrolled or acknowledged, as the case may require, will bar an entail or pass the estate of a married woman as effectually as a conveyance by lease and release. The reason for referring to the subject is, the idle doubts which were thrown out with respect to the effect of releases executed in pursuance of the act 4 & 5 Vict. c. 21, to bar entails and pass the estates of married women. See 1 Martin's Practice of Conveyancing, 464.

Ancient modes of conveyance may still be used.

The new act does not abolish any of the ancient modes of conveyance, but only extends the power of conveying by grant to the immediate freehold of corporeal hereditaments; it will, therefore, still be open to convey by lease and release, or by a release referring to the statute 4 & 5 Vict. c. 21, or by feoffment with livery of seisin or bargain and sale inrolled. But the superior convenience of conveying by grant must by degrees throw all other modes of conveyance out of use.

Customary freeholds.

The new act (unlike the Transfer Act) does not

interfere with customary freeholds, and such freeholds will continue to be conveyed by the customary mode of conveyance. See 1 Cru. Dig., by White, tit. x., ch. 1, sects. 9 et seq., p. 255.

Feoffments.

SECTION 3.—A feoffment might, up to the present time, have been made in most cases by word, without any writing, (Shepp. Touchst. 203); and the custom of Kent, which allows an infant who has attained fifteen to alien his gavelkind lands by feoffment, requires that the livery of seisin shall be by the infant personally. (Robinson on Gavelkind, book 2, ch. 3). The new act requires that a feoffment, made after the 1st day of October, 1845, (other than a feoffment made under a custom by an infant), shall be void at law, unless evidenced by deed. It does not seem necessary that a feoffment should be accompanied cotemporaneously by a deed: it will be sufficient for the feoffment to be at any time afterwards evidenced by a deed made by the parties competent. The propriety of putting an end to the possibility of verbal conveyances cannot be doubted, but the enactment is of no practical importance, as a feoffment not evidenced by deed is quite unknown in modern practice. The customary feoffment by an infant is excepted, in order not to touch gavelkind customs in any way (*a*).

Partition.

At common law, coparceners might have made

(*a*) See supra, pp. 29, 30.

partition of things lying either in livery or grant by parol without deed, and tenants in common might have made partition of things lying in livery by parol without deed, if they perfected the partition by livery of seisin. (Litt., sect. 250; Co. Litt. 169. a.) Also joint-tenants for years (but not joint-tenants of freeholds) might have made partition by parol without deed. (Co. Litt. 187. a., 169. a.) After the Statute of Frauds, however, a writing was in all cases necessary: but a deed was required only in cases in which it was necessary before the statute, although it was sometimes asserted, (2 Bl. Comm. 324; 4 Cru. Dig., by White, 77), by mistake, that the statute had rendered a deed in all cases necessary.

Exchange.

At common law, an exchange of things lying in grant could be made only by deed, but an exchange of corporeal hereditaments lying in the same county could be made by parol perfected by entry. (Litt., sects. 62—66). If the lands, however, to be exchanged lay in two counties, the exchange could only be by deed indented. (Sect. 63; Co. Litt. 50. a., 51. b.) After the Statute of Frauds, all exchanges were required to be in writing, but a deed was necessary only where it was necessary before the statute.

By the new act, every partition and exchange made after the 1st day of October, 1845, of hereditaments (not being copyhold) will be void *at law*, unless made by deed. The enactment is very proper as a means of preventing the disputes which

would arise on irregular and informal partitions and exchanges, but will not affect the practice of conveyancers, as no partition or exchange is ever made at the present day without a deed.

Leases.

A lease for years is defined to be a contract between lessor and lessee for the possession and profits of lands or other hereditaments on the one side, and a recompense for rent or other income on the other; (Bac. Abr., art. "LEASES"); and hence the rule, that any words which indicate that one party is to give and the other to take possession, primâ facie constitute a lease. The Statute of Frauds merely requires that a lease for a period exceeding three years shall be in writing; and, therefore, on every informal agreement for a lease, and very frequently on formal agreements, the question arose, whether the instrument operated as an actual demise, or merely as an agreement to demise. The subject is discussed in a short compass in 4 Martin's Conveyancing, 4 et seq. In addition, also, to the cases there cited, in which the reference to a future lease has been held to make an agreement executory, see *Chapman* v. *Towner*, (6 Mee. & W. 100), *Brashier* v. *Jackson*, (6 Mee. & W. 549), *Jones* v. *Reynolds*, (1 Gale & Dav. 62); see also *Curling* v. *Mills*, (6 M. & G. 173), in which the reference to a future lease was held not to make the agreement executory. Note too, that, although an agreement amount to a lease, a specific performance may be had for a more formal instrument.

(*Fenner* v. *Hepburn*, 2 You. & Coll. N. C. 159; *Gore* v. *Floyd*, 12 Mee. & W. 463). The new act by requiring that all leases required by law to be in writing shall, after the 1st of October, 1845, be by deed, will close up this abundant source of litigation, and will greatly lighten the task of the conveyancer in preparing agreements for leases; for if the instrument be not under seal, it will operate only as an agreement for a lease, whatever form or language be employed.

The act, in this instance, embraces hereditaments of every tenure, but does not affect leases not required by law to be in writing, i. e. leases for periods of less than three years, and does not extend to leases of hereditaments in Ireland.

Assignments.

Previously to the Statute of Frauds an assignment might have been by parol only, but that statute required that all assignments of leases or terms of years should be by deed or note in writing duly signed. (See *Hodges* v. *Drakeford*, 1 Bos. & Pul., N. R., 270). The present act provides that every assignment made after the 1st of October, 1845, of a chattel interest not being copyhold in any hereditaments, shall be void at law unless made by deed: the enactment, it will be seen, does not except common-law chattel interests in copyholds, such as leases of copyholds made under a license to demise. This provision, though proper for the reasons above mentioned, with respect to feoffments, partitions, and exchanges, will make no change in the practice of

conveyancers, as assignments are already invariably made by deed.

Surrenders.

At common law a surrender of corporeal hereditaments might have been made by parol without deed or livery; but a surrender of incorporeal hereditaments could only have been by deed. The Statute of Frauds required that every surrender should be made by deed or note in writing signed by the party so surrendering, or his agent. (4 Cru. Dig., by White, 85). The present act requires, that every surrender in writing made after the 1st of October, 1845, of an interest in any hereditament, not being a copyhold interest, and not being an interest which might by law have been created without writing, shall be void at law, unless made by deed.

The act does not apply to surrenders by operation of law, and, so far as relates to a *release* or surrender, does not extend to Ireland (*a*).

Feoffments not to have a tortious operation.

SECTION 4.—A feoffment perfected by livery of seisin was termed a tortious conveyance, and had the effect of passing the fee, if it purported so to do, notwithstanding the feoffor had a less estate or interest in the property, or no estate at all but possession. It also had the effect of de-

(*a*) The proviso as to Ireland was introduced in the House of Commons without reference to the authors of the bill: the word "release" is evidently a mistake for "lease," and renders the effect of this proviso uncertain.

stroying contingent remainders and powers appendant, and of creating a forfeiture. Conveyances by grant, bargain and sale, lease and release, or covenant to stand seised, were termed innocent assurances, and had no effect except to pass the estate of the conveying party. Beyond this they were simply void, neither passing a greater estate, nor creating a forfeiture. (See Sanders on 'Uses,' 5th edit., pp. 12 et seq.) By the operation of the present statute, a feoffment will henceforward have no other effect than an innocent assurance.

Exchanges and partitions not to imply a condition in law.

The word "exchange" created a general warranty and right of re-entry, which rendered titles under exchanges extremely inconvenient and embarrasing. This inconvenience was got over in modern practice by means of mutual conveyances; but, as the above-mentioned operation of the word "exchange" has been abolished both by the Transfer Act and the new act, a proper exchange may hereafter in some cases be conveniently resorted to. With regard to the effect of the word "exchange," see Shep. Touch. 291; 4 Cru. Dig., by White, p. 74; 3 Martin's Conveyancing, 59, n. (*h*), and 135, n. (*a*); 1 Martin's Conveyancing, 170 and 422 (*a*).

Every partition also implied a special warranty in law; (Shep. Touch. 185; Co. Litt. 384. a.): in modern practice this is always prevented by the insertion of the usual covenants for title, and

(*a*) See also supra, p. 30.

the abolition of the general warranty is practically unimportant (*a*).

"Give" and "grant" not to imply a covenant in law.

The word "give" in a feoffment made a warranty when an estate of frank tenement or inheritance passed by the deed, and was also made by statute an express warranty during the life of the feoffor. (Shep. Touch. 184; Co. Litt. 384. a., and n. (1)). The word "grant" implied a general covenant for quiet enjoyment or general warranty in a lease for years, but not otherwise. (Co. Litt., and note, ubi supra; 1 Martin's Conveyancing, 333—337; 4 Martin's Conveyancing, 40. See, too, *Hinde* v. *Gray*, 1 M. & G. 195; *Granger* v. *Collins*, 6 Mee. & W. 458; *Lessenbury* v. *Evans*, 3 M. & G. 210; *Williams* v. *Burrell*, 1 Mann., Gran., & Scott, 402). The new act declares that neither "give" nor "grant" in a deed executed after the 1st of October, 1845, shall imply any covenant in law in respect of any hereditament, except by force of any act of Parliament. The exception in the statute probably refers to the provisions in railway and other acts of that nature, in which it is provided, that the word "grant" in conveyances to and by the company shall imply all the usual covenants for title; but, as the exception does not extend to a warranty, it does not keep on foot the warranty annexed by statute to the word "give," as above mentioned. "Give," however, is altogether disused as a word of conveyance (*b*).

(*a*) See supra, pp. 30, 31. (*b*) See further supra, p. 30.

The word "demise," in a lease for years, creates a covenant for quiet enjoyment; (see the references above as to "grant"); and this implication is not taken away either by the Transfer Act or the present act.

Distinction between indenture and deed-poll.

SECTION 5.—The well-known distinction between a deed-poll and an indenture is, that a deed-poll is by one party only, and has its edge polled, or even, while an indenture is between two or more parties, and has its edge indented, the indented edge being the symbol of a duplicate, or supposed duplicate in the custody of another party. The actual indenting, however, has been long disregarded, and, in modern practice, the deed-poll and indenture have been distinguished only by their words of commencement and the commencement of their operative parts. (Co. Litt. 143. b., 229. a.; 2 Black. Comm. 295; 4 Cru. Dig., by White, 8; Burton's Real Property, 140, 140, n., 439; 1 Martin's Conveyancing, 321, 323).

A practical distinction between an indenture and a deed-poll is, that no person can take an immediate estate or benefit under an indenture, unless he be named as a party to it; but any person can take an immediate estate or benefit under a deed-poll, inasmuch as it is addressed to all the world. (Co. Litt. 26. a., 231. a.; Burton's Real Property, 442, 442, n.; 2 Prest. Conv. 394 et seq.; 1 Martin's Conveyancing, 324). It has, however, been questioned, whether a person not in esse at

the time of the execution of a deed-poll can take an immediate benefit under it.

Another practical distinction between a deed-poll and an indenture is, that a covenant entered into by a deed-poll with any covenantee named in the deed is valid; but a covenant in an indenture entered into with a person not a party cannot be sued on by that person. (*Greene* v. *Hoare*, Salk. 197; *Berkely* v. *Hardy*, 5 B. & C. 353; see, too, the cases cited, 5 Martin's Conveyancing, 462, n. (*b*)). An action, however, may be maintained by a party to an indenture against one who is not a party, but executed the deed. (*Salter* v. *Kidgley*, Carth. 76. See further, 2 Prest. Conv. 396 et seq.)

These distinctions are abolished by this section of the new act so far only as relates to hereditaments; and under an indenture executed after the 1st October, 1845, an immediate estate or interest in any hereditaments, and the benefit of a covenant or of a condition respecting any hereditaments, may be taken by a person not a party.

The enactment at the end of the section, that a deed executed after 1st October, 1845, and purporting to be an indenture, need not be actually indented, merely expresses what has been long understood to be law (*a*).

Conveyance of contingent and executory interests.

SECTION 6.—Before the statute 3 & 4 W. 4, c. 74, (the Act for the Abolition of Fines and Re-

(*a*) See further supra, pp. 31—34.

coveries), a contingent interest in real estate could be conveyed by fine; (*Doe* d. *Christmas* v. *Oliver*, 10 B. & C. 181); but, after that statute, contingent interests in real estate in England could not be conveyed at law, but merely in equity, as a matter of contract; (3 Martin's Conveyancing, 178, 179; 4 Martin's Conveyancing, 301): the Irish Act for the Abolition of Fines and Recoveries, 4 & 5 W. 4, c. 92, authorised the conveyance of contingent interests in hereditaments in Ireland. This state of the law was attempted to be remedied by the 5th section of the Transfer Act (*a*); the attempt succeeded very imperfectly, but the present act seems to give a complete power to dispose of all contingent and future interests in hereditaments of any tenure, except that as to rights of entry the enactment is confined to England (*b*). A person taking a conveyance under this enactment will stand precisely in the place of the person from whom he takes, and will become entitled in possession or absolutely, if the grantor would have become so en-

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(*a*) See supra, p. 12.

(*b*) This section, as it came from the framers, applied to England only; but in Parliament the words "in England" were struck out in the first branch, and the reference to the Irish Recovery Act added. The words "in England," in the second branch, were, it is supposed, left in through inadvertence. The addition of the reference to the Irish Recovery Act introduces an apparent ambiguity in section 7, as to which of the recovery acts is intended, though all real question is obviated by the context.

titled, but not otherwise. With respect to copyholds, no surrender will be necessary in the case of a disposition under the act; but the person to whom the conveyance is made will, on its falling into possession, be entitled to admittance in the place of the person originally entitled.

Section 7.—This clause is intended to preclude a question which has been made, whether a married woman can disclaim by force of the Act for the Abolition of Fines and Recoveries, 3 & 4 Will. 4, c. 71. The enactment is confined to England alone, but the Irish Act, 4 & 5 Will. 4, c. 92, sect. 68, expressly authorises a disclaimer by a married woman (*a*).

Contingent remainders.

Section 8.—With respect to this enactment see the observations, supra, pp. 51, 52, and the remarks in Mr. Bellenden Ker's Letter, (supra, pp. 36—47). It will be observed that only such of the contingent remainders created before the passing of the act are protected as have been existing since the 31st of December, 1844; that is, only such of the contingent remainders created before the passing of the act as had not failed or been destroyed before the 31st of December, 1844, and could not, by means of the 8th sect. of the Transfer Act, have failed or been destroyed since that day by the destruction or merger of the pre-

(*a*) See supra, p. 36; see, too, the last note.

ceding estate. The practical benefit to conveyancing of this section is the same as that which was derived from the corresponding section of the Transfer Act; viz. the omission (which has now become usual) of the limitations to trustees to preserve contingent remainders.

It should be borne in mind that no alteration has been made in the rule, that a contingent remainder cannot be limited without a particular estate of freehold to support it; or in the rule that the remainder will fail if the particular estate determine by effluxion of time, or by some event on which it was, in its creation, limited to determine, before the remainder becomes vested. (See supra, pp. 43 et seq.)

SECTION 9.—The object of this section is to do away with the rule that the covenants of, and remedies against a lessee, and the obligations on the lessor, being incident to the immediate reversion, cease as regards the land on the surrender or merger of that reversion. (*Webb* v. *Russell*, 3 T. R. 678; *Wootley* v. *Gregory*, 2 You. & J. 536; *Burton* v. *Barclay*, 7 Bing. 745; *Thorn* v. *Woolcombe*, 3 B. & Adol. 586). The rule was altogether technical, was productive of injustice when it did operate, and occasioned a good deal of expense and trouble in preventing its operation when foreseen (*a*). The present enactment, however,

(*a*) See supra, pp. 47, 48.

does not remedy the similar evil, which arises when the immediate reversion is extinguished, otherwise than by surrender or merger. This is a case which may happen when a lease has been granted by the trustees of a term, which is afterwards extinguished, either by virtue of a proviso for cesser contained in the instrument creating it, or of the act of the 8 & 9 Vict. c. 112, infra, p. 88; or where a lease, out of which under-leases have been granted, has, on a purchase of the fee by the lessee, been assigned to attend the inheritance. It may, however, be maintained, perhaps, that in these cases there is no extinguishment on the ground that, neither a proviso for cesser, nor the act referred to, will extinguish a term or lease, so long as there are rents and covenants legally incident thereto, inasmuch as the trusts of the term are not fully performed, or the term or lease become a satisfied term, so long as such rent and covenants are incident thereto.

OBSERVATIONS

ON

THE ACT 8 & 9 VICT. CAP. 112.

As this act makes a great change in the law, it may be interesting to the Profession to be acquainted with its origin and history.

Origin and history of the act.

The first clause (except the preamble) and the substance of the second clause were framed by the Author of the present Work, and, after being submitted to the revision of a learned friend of great eminence as a conveyancer, were, in the spring of 1844, given to Lord Brougham to be proposed for insertion, if his lordship should think fit, in the bill then before the House of Lords for simplifying the transfer of property. That bill, in a very abridged form, ultimately passed into the late Act to simplify the Transfer of Property; but the clauses referred to were not introduced, and were afterwards printed, with a note explaining their origin and intended purpose, in the first

edition of this Work. In the session of the 8 & 9 of her present Majesty, these clauses, with some alteration in the second, and with the addition of a title, a preamble, the interpretation clause in the third section, and the limitation in the fourth section, were brought forward by Lord Brougham as an independent bill, and passed into the act 8 & 9 Vict. c. 112.

The clauses, as originally framed, and the act, are open to a good deal of observation; and though the benefit of the abolition of attendant terms is great and obvious (*a*), it is to be regretted that a hasty production, as the two clauses were, should have been passed into a law, without having been first submitted (as it was intended they should have been) to the Profession at large, and received the additions and emendations which they require.

Inaccuracy of

The title of the act is incorrect, for the purpose

(*a*) There can be no question that the saving of expense, which this act has occasioned to the purchasers and mortgagors of land, is very great; most properties, however small, were incumbered with at least one term, and many with several, and every such term was assigned, and most commonly by a separate deed, and the title to it investigated on every dealing with the property. Neither the advocates or opponents of the "landed interest" seem to be aware, that the (practical) abolition of leases for a year and of the assignment of attendant terms has relieved the "landed interest" from a burden which cannot be estimated, on the most moderate calculation, at less than £250,000 a year.

of it is, not to render the assignment of satisfied terms unnecessary, but to extinguish the terms themselves, and so render their assignment impossible. The assignment of attendant terms never was necessary; it was only a matter of caution. The preamble also is inaccurate; the assignment of satisfied terms was a very easy and expeditious operation—the delay and difficulty arose in making out the title: expense, indeed, was incurred in assigning terms, as well as in deducing the title to them, but much more on the latter than on the former account. the title and preamble.

In the first section the words "inheritance" and "reversion" are put in the disjunctive, so that the act will apply to satisfied terms attendant upon the immediate reversion, though such reversion be not the inheritance. The word "land" is used in one place in this section evidently by mistake for "lands (*a*);" and, as the interpretation clause gives only to "lands" the extended meaning of "hereditaments," and does not give to the plural number the effect of the singular, it may be maintained that the provision in the first section will not extend to hereditaments other than "lands" in the strict technical sense. If this construction were adopted (which, however, it is not understood to Construction of the first section.

(*a*) This was not so in the print of the clause in the first edition of this Work.

have been) the act would be much narrowed in its operation. Subject to this question, the first section has been treated by the Profession as having succeeded in making all satisfied terms, which were attendant on the 31st Dec. 1845, cease and determine on that day; and so far as conveyancers are concerned, the only points to be determined are, whether the term was, on the 31st of Dec. 1845, "satisfied," and was also, on the same day, "attendant upon the inheritance or reversion." The expression "satisfied term" is an expression in common use, and is generally understood to mean a term, the trusts, purposes, or objects of which have been performed or fulfilled, or have become incapable of taking effect. Thus, a term limited in trust to raise a sum of money is "satisfied" when the money is raised. A mortgage term is "satisfied" when the mortgage is paid off; a term to raise portions is satisfied, either when the portions are raised, or when it has become certain that there can be no persons entitled, and so on; but it is probable that cases will occur in which there must be a doubt whether a term is or is not a "satisfied term (*a*)." Questions will

(*a*) It was originally intended to introduce into the act a definition of "a satisfied term," but it was found difficult to give the definition in precise language, and therefore the expression was left to its ordinary meaning, as established by the practice of conveyancers and judicial interpretation.

also occur as to when a term is "attendant upon the inheritance or reversion;" rarely, indeed, when it is so attendant by express declaration, but more frequently when it is attendant only by construction of equity.

When a term is set up as a protection under the act against an incumbrance, &c., or is intended to be used in ejectment as such a protection, the task of drawing the pleadings, and deciding on the construction of the act, will probably be a matter of difficulty. The provision was framed

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It has been suggested that no term is "satisfied" which is assigned upon the ordinary trusts to attend the inheritance, because the trust is to assign the term as the purchaser or mortgagee, or other owner, his heirs and assigns, shall direct, and in the meantime to allow it to attend the inheritance, and protect from all mesne incumbrances. But a term so assigned has always been held to be, and is, "a satisfied term," according to the general practice and understanding of the Profession. When, however, upon a mortgage the term is assigned, as is sometimes the case, in trust for the mortgagee, his *executors*, *administrators*, and assigns, to further secure the payment to him and them of the mortgage-debt, and subject thereto in trust for the mortgagor or mortgagee, his *heirs* and assigns, and to attend the inheritance (see infra, Prec. 28), the act does not operate during the continuance of the mortgage; because during that time the term is not simply a satisfied attendant upon the inheritance. And the result is of course the same whenever any trust is declared of the term prior to the trust making it attendant upon the inheritance.

on the model of the similar provision inserted in modern railway acts, but no case (so far as the Author is aware) has arisen under any of those acts.

It is still necessary to abstract the titles to satisfied terms, in order that the counsel of the purchaser or mortgagee may see that they are satisfied and attendant upon the inheritance, so as to come within the operation of the act; but it is not necessary to require or furnish the legal title, further than such title is shewn in making out that the terms have fallen under the operation of the act. The saving of expense and trouble by this consequence of the act is obviously very great.

Construction of the second section.

The second section applies to terms becoming satisfied and attendant after the 31st December, 1845, and determines them immediately upon their becoming so attendant. Neither of the sections includes terms (if such there can be) which, being satisfied before the 31st of December, 1845, become attendant afterwards. This arises from the alteration made in the original clause, but is probably not material, as a satisfied term is necessarily attendant in equity. The proposed 2nd section ran thus:—"That every satisfied term of years now subsisting, or hereafter to be created, and which, either by express declaration or by construction of law, shall, after the said —— day of ——, become attendant upon the reversion or inheritance of any land, shall, immediately upon the

same becoming so attendant, absolutely cease and determine as to the land upon the inheritance or reversion whereof such term shall become attendant as aforesaid." The same mistake as to the use of the word "land" in the singular number occurs in this section also, and gives rise to the same doubt as that suggested on the first section. The same questions will also be raised as to whether a term is "satisfied" and is "attendant upon the inheritance or reversion."

Construction of the interpretation clause.

The interpretation clause in the third section is likely to impede the operation of the act; and this is the more to be regretted, because, by a slight change in some of the words and expressions of the first two sections, the necessity for the interpretation clause contained in the third section would have been altogether avoided. The reason for restricting the operation of the act to freehold hereditaments and customary *land*, passing by deed, or deed and admittance, is not obvious. The proper course would seem to have been to have included hereditaments of any tenure; for satisfied attendant terms are as great an evil to lands of one tenure as of another. It is very true that satisfied terms in copyholds are of very rare occurrence, but they are not incompatible with the tenure, and may occasionally exist; (see *Earl of Bath* v. *Abney*, 1 Burr. 206; Burton's Comp., art. 1314); and lands passing by deed, and surrender and admittance, which seem to be customary freehold, (see

Bingham v. *Woodgate*, 1 Russ. & My. 32, 750), and are therefore liable, it is presumed, to be infested with attendant terms, are apparently excluded from the benefit of the act. So, too, it would seem, are customary hereditaments (if such there be) which are not land, and which pass by deed, or deed and admittance.

8 & 9 VICT. CAP. 106.

AN ACT TO AMEND THE LAW OF REAL PROPERTY.

[*Royal Assent, 4th August*, 1845.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, as follows; (that is to say),

REPEAL OF THE ACT 7 & 8 VICT. C. 76.

I. That so much of an act passed in the last session of Parliament, intituled "An Act to simplify the Transfer of Property," as enacted, that, after the time at which that act should come into operation, no estate in land should be created by way of contingent remainder; but that every estate which, before that time, would have taken effect as a contingent remainder should take effect (if in a will or codicil) as an executory devise, and (if in a deed) as an executory estate of the same nature, and having the same properties,

Repeal of so much of 7 & 8 Vict. c. 76, as abolishes contingent remainders as from the commencement;

as an executory devise; and that contingent remainders existing under deeds, wills, or instruments, executed or made before the time when that act should come into operation, should not fail, or be destroyed or barred, merely by reason of the destruction or merger of any preceding estate, or its determination by any other means than the natural effluxion of the time of such preceding estate, or some event on which it was in its creation limited to determine, shall be and is hereby repealed, as from the time of the commencement and taking effect thereof; and that the residue of the said act shall be and is hereby repealed, as from the first day of October, one thousand eight hundred and forty-five.

and the residue as from 1st Oct. 1845.

CORPOREAL HEREDITAMENTS TO LIE IN GRANT.

The immediate freehold of corporeal tenements to lie in grant as well as in livery. Stamp duty on grants thereof.

II. That, after the said first day of October, one thousand eight hundred and forty-five, all corporeal tenements and hereditaments shall, as regards the conveyance of the immediate freehold thereof, be deemed to lie in grant as well as in livery; and that every deed which, by force only of this enactment, shall be effectual as a grant, shall be chargeable with the stamp duty with which the same deed would have been chargeable in case the same had been a release, founded on a lease or bargain and sale for a year, and also with the same stamp duty (exclusive of progressive

duty) with which such lease or bargain and sale for a year would have been chargeable.

FEOFFMENTS, ETC. TO BE BY DEED.

Feoffments, partitions, exchanges, leases, assignments, and surrenders required (subject to certain exceptions) to be by deed.

III. That a feoffment, made after the said first day of October, one thousand eight hundred and forty-five, other than a feoffment made under a custom by an infant, shall be void at law, unless evidenced by deed; and that a partition, and an exchange, of any tenements or hereditaments, not being copyhold, and a lease, required by law to be in writing, of any tenements or hereditaments, and an assignment of a chattel interest, not being copyhold, in any tenements or hereditaments, and a surrender in writing of an interest in any tenements or hereditaments, not being a copyhold interest, and not being an interest which might by law have been created without writing, made after the said first day of October, one thousand eight hundred and forty-five, shall also be void at law, unless made by deed: Provided always, that the said enactment, so far as the same relates to a release or a surrender, shall not extend to Ireland.

FEOFFMENTS, ETC. NOT TO OPERATE BY WRONG, AND THE IMPLIED EFFECT OF CERTAIN WORDS ABOLISHED.

Feoffments not to operate by wrong, nor exchanges or

IV. That a feoffment, made after the said first day of October, one thousand eight hundred and

partitions to imply any condition, or give and grant any covenant.

forty-five, shall not have any tortious operation; and that an exchange, or a partition, of any tenements or hereditaments, made by deed, executed after the said first day of October, one thousand eight hundred and forty-five, shall not imply any condition in law; and that the word "give" or the word "grant," in a deed, executed after the same day, shall not imply any covenant in law, in respect of any tenements or hereditaments, except so far as the word "give" or the word "grant" may, by force of any act of Parliament, imply a covenant.

INDENTURES.

Strangers may take immediately under an indenture; and a deed purporting to be an indenture shall take effect as such.

V. That, under an indenture, executed after the first day of October, one thousand eight hundred and forty-five, an immediate estate or interest in any tenements or hereditaments, and the benefit of a condition or covenant respecting any tenements or hereditaments, may be taken, although the taker thereof be not named a party to the same indenture; also, that a deed, executed after the said first day of October, one thousand eight hundred and forty-five, purporting to be an indenture, shall have the effect of an indenture, although not actually indented.

CONVEYANCE OF CONTINGENT INTERESTS.

Contingent and other like interests, also

VI. That, after the first day of October, one thousand eight hundred and forty-five, a contin-

gent, an executory, and a future interest, and a possibility coupled with an interest, in any tenements or hereditaments, of any tenure, whether the object of the gift or limitation of such interest or possibility be or be not ascertained, also a right of entry, whether immediate or future, and whether vested or contingent, into or upon any tenements or hereditaments in England, of any tenure, may be disposed of by deed; but that no such disposition shall, by force only of this act, defeat or enlarge an estate tail; and that every such disposition by a married woman shall be made conformably to the provisions, relative to dispositions by married women, of an act passed in the third and fourth years of the reign of his late majesty King William the Fourth, intituled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance," or, in Ireland, of an act passed in the fourth and fifth years of the reign of his said late majesty, intituled "An Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance, in Ireland."

rights of entry made alienable by deed, saving estates in tail; and as regards married women, enjoining conformity to 3 & 4 W. 4, c. 74, and 4 & 5 W. 4, c. 92.

4 & 5 W. 4, c. 92.

DISCLAIMER BY MARRIED WOMEN.

VII. That, after the first day of October, one thousand eight hundred and forty-five, an estate or interest in any tenements or hereditaments in England, of any tenure, may be disclaimed by a

Capacity of married women to disclaim estates or interests by deed extended to England.

married woman by deed; and that every such disclaimer shall be made conformably to the said provisions of the said Act for the Abolition of Fines and Recoveries and for the Substitution of more simple Modes of Assurance.

PROTECTION OF CONTINGENT REMAINDERS.

Contingent remainders protected as from 31st Dec., 1844, against the premature failure of a preceding estate.

VIII. That a contingent remainder, existing at any time after the thirty-first day of December, one thousand eight hundred and forty-four, shall be, and, if created before the passing of this act, shall be deemed to have been, capable of taking effect, notwithstanding the determination, by forfeiture, surrender, or merger, of any preceding estate, of freehold, in the same manner, in all respects, as if such determination had not happened.

REVERSIONS OF LEASES.

When the reversion on a lease is gone, the next estate to be deemed the reversion.

IX. That, when the reversion expectant on a lease, made either before or after the passing of this act, of any tenements or hereditaments, of any tenure, shall, after the said first day of October, one thousand eight hundred and forty-five, be surrendered or merge, the estate which shall for the time being confer as against the tenant under the same lease the next vested right to the same tenements or hereditaments, shall, to the extent and for the purpose of preserving such

incidents to, and obligations on, the same reversion, as, but for the surrender or merger thereof, would have subsisted, be deemed the reversion expectant on the same lease.

SCOTLAND.

X. That this act shall not extend to Scotland. Act not to extend to Scotland.

8 & 9 VICT. CAP. 112.

AN ACT TO RENDER THE ASSIGNMENT OF SATISFIED TERMS UNNECESSARY (*a*).

[*Royal Assent, 8th August*, 1845.]

CESSER OF TERMS ALREADY ATTENDANT.

WHEREAS the assignment of satisfied terms has been found to be attended with great difficulty, delay, and expense, and to operate in many cases to the prejudice of the persons justly entitled to the lands to which they relate: be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the lords spiritual and temporal, and commons, in this present Parliament assembled, and by the authority of the same, that every satisfied term of years which, either by express declaration or by construction of law, shall, upon the thirty-first day of December, one thousand eight hundred and forty-five, be attendant upon the inheritance or reversion of any lands, shall on that day absolutely cease and determine as to the land upon the inheritance or reversion whereof such term shall be attendant as aforesaid, except that every such term of years which shall be so attendant as aforesaid by ex-

On 31st Dec., 1845, satisfied terms of years then attendant on the inheritance or reversion to cease, but to continue to be a protection to a certain extent.

(*a*) The marginal notes have been altered, as they were not accurate.

press declaration, although hereby made to cease and determine, shall afford to every person the same protection against every incumbrance, charge, estate, right, action, suit, claim, and demand, as it would have afforded to him if it had continued to subsist, but had not been assigned or dealt with, after the said thirty-first day of December, one thousand eight hundred and forty-five, and shall, for the purpose of such protection, be considered in every court of law and of equity to be a subsisting term.

CESSER OF TERMS HEREAFTER BECOMING ATTENDANT.

Satisfied terms hereafter becoming attendant, to cease on becoming attendant.

II. And be it enacted, that every term of years now subsisting or hereafter to be created, becoming satisfied after the said thirty-first day of December, one thousand eight hundred and forty-five, and which either by express declaration or by construction of law, shall after that day become attendant upon the inheritance or reversion of any lands, shall, immediately upon the same becoming so attendant, absolutely cease and determine as to the land upon the inheritance or reversion whereof such term shall become attendant as aforesaid.

INTERPRETATION CLAUSE.

Interpretation clause.

III. And be it enacted, that, in the construction and for the purposes of this act, unless there be something in the subject or context repugnant to

such construction, the word "lands" shall extend to all freehold tenements and hereditaments, whether corporeal or incorporeal, and to all such customary land as will pass by deed, or deed and admittance, and not by surrender, or any undivided part or share thereof respectively; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing; and every word importing the masculine gender only shall extend and be applied to a female as well as a male.

Not to extend to Scotland.

IV. And be it enacted, that this act shall not extend to Scotland.

PRECEDENTS.

Agreements.

I.

Agreement *for a* Lease (*a*).

Agreement for a lease.

BE IT REMEMBERED, that A. B., of &c. [*intended lessor*], hereby agrees to let, and C. D., of &c. [*intended lessee*], to take, ALL THAT &c. [*parcels*] and the rights, easements, and appurtenances therewith held, used, or enjoyed, for —— years from the —— day of ——, at the yearly rent of £——, clear of all existing and future taxes, rates, and outgoings, and to be payable by equal half-yearly payments on the —— day of ——, and the —— day of ——, in every year, the first of such payments to be made on the —— day of —— next. AND that the said C. D. shall keep the said pre-

(*a*) As agreements are not formal instruments, and do not admit of much abridgment from their usual shape, the present collection contains Precedents only of agreements for leases, the law as to which has been most materially altered by the late act. (See supra, p. 62). It will, of course, be borne in mind that these agreements must be signed only, not sealed and delivered; for otherwise they would operate as leases. (Ibid.)

mises, and at the end of the term give them up, in the same order and repair as they now are in, and shall keep them insured against loss by fire in a sum not less than £——, and, when required, produce the policy of such insurance, and the receipts for the premiums (*a*). IN WITNESS &c.

II.

AGREEMENT *for a* LEASE.

Parties.

Agreement.

ARTICLES OF AGREEMENT made and entered into, this —— day of ——, BETWEEN A. B., of &c. [*intended lessor*], of the one part, and C. D., of &c. [*intended lessee*], of the other part, as follows: THAT the said A. B. shall let, and the said C. D. shall take, ALL THAT &c. [*parcels*], with the fixtures now in, upon, or belonging to the same, and the rights, easements, and appurtenances therewith held, used, or enjoyed, for the term of —— years from the —— day of ——, at the yearly rent, clear of all existing and future taxes, rates, and outgoings, of £——, to be payable by four equal payments, on the —— day of ——, the

To grant a lease for a certain term at a certain rent.

(*a*) Any stipulations which are intended may be inserted here. It will be understood that this form should only be adopted in very simple cases, and in which the saving of expense is a great object; for ordinary purposes the next Precedent should be used.

—— day of ——, the —— day of ——, and the —— day of —— in every year; the first of such payments to be made on the —— day of —— next. THAT the said A. B., his heirs or assigns, will, on the request of the said C. D., his executors, administrators, or assigns, execute a proper lease of the said premises to the said C. D., his executors, administrators, or assigns, for the term and at the rent aforesaid, to be payable as aforesaid. THAT the said lease shall contain covenants on the part of the said C. D., his executors, administrators, and assigns, for payment of the said net yearly rent of £—— on the days and in manner aforesaid; AND for payment of all existing and future taxes, rates, and outgoings; AND to keep the said premises in good and sufficient condition and repair; AND in such good and sufficient condition and repair to deliver up the same, with all new fixtures and other additions, to the said A. B., his heirs or assigns, at the expiration, or other sooner determination, of the said term; AND to keep the said messuage and buildings insured against loss by fire in a sum not less than £——; AND at all times, when required, to produce the policy or policies of such insurance, and the receipts for the premiums in respect of the same, to the said A. B., his heirs or assigns; AND ALSO, not to assign or underlet the said premises without license in writing from the said A. B., his heirs or assigns; AND not to carry on, or permit to be carried on, on the said premises,

That the lease shall contain certain covenants.

any noisome or offensive trade, business, or occupation. THAT the said lease shall also contain a proviso for re-entry by the said A. B., his heirs or assigns, on non-payment of the said yearly rent of £——, or any part thereof, for twenty-one days next after any of the said days on which the same, or any part thereof, shall become due, and whether the same shall have been legally demanded or not, or on the non-observance or non-performance of any of the covenants in the said lease to be contained, and on the part of the said C. D., his executors, administrators, or assigns, to be observed or performed. THAT the said lease shall contain a covenant, on the part of the said A. B., his heirs or assigns, that the said C. D., his executors, administrators, and assigns, may, on due payment by him and them of the said yearly rent to be reserved as aforesaid, and on the observance and performance of the covenants in the said lease to be contained, and on his and their part to be observed and performed, quietly enjoy the premises to be demised, without eviction or disturbance by the said A. B., his heirs or assigns, or any person lawfully claiming through or in trust for him or them. THAT the said C. D., his executors, administrators, or assigns, shall duly execute and deliver to the said A. B., his heirs or assigns, a counterpart of the said lease. THAT the said lease and counterpart shall be prepared by the solicitor of the said A. B., his heirs or assigns, and that the expenses of preparing and executing

That the lease shall contain a proviso for re-entry,

and a covenant for quiet enjoyment.

That lessee shall execute a counterpart.

That lease and counterpart shall be prepared by the lessor's solicitor, and the expense

this agreement and the said lease and counterpart, and all other incidental expenses, shall be paid by the said A. B., his heirs or assigns, and the said C. D., his executors, administrators, or assigns, in equal shares (*a*). LASTLY, THAT, until the execution of the said lease, the said premises shall be held by the said C. D., his executors, administrators, and assigns, at the rent aforesaid, and subject to the covenants and conditions to be contained in the said lease as aforesaid, so far as the rules of law will permit. IN WITNESS &c. (*b*). equally divided.

(*a*) In the absence of special stipulation, a lease is always prepared by the solicitor of the lessor, and at the expense of the lessee. Where, in an agreement for a lease, it was provided that the lease should be drawn, prepared, and executed at the sole expense of the lessor, it was held, that, in an action by the lessee on the agreement, it was not necessary to aver that a lease was tendered to the lessor for execution. (*Price* v. *Williams*, 1 Mee. & W. 6).

(*b*) It will be observed, that all the covenants and conditions to be contained in the lease are specified in the agreement, because an agreement that the lease shall contain all usual covenants and conditions generally leads to disputes as to what are usual covenants and conditions. The method in the text is not free from risk; for, as the nature of each covenant and condition is only mentioned generally, disputes may arise as to its extent and form. The only safe way is to insert in the agreement all the covenants and conditions literally as they are to stand in the lease; but this makes the agreement so much longer, that it will be generally objected to. The method in the text is the next best. As to what are usual covenants, see 4 Martin's Conveyancing, 14 et seq.

Conveyances.

III.

Conveyance *in* Fee *by a* Vendor *seised in Fee, his* Wife *releasing her* Dower.

Parties. THIS INDENTURE, made the —— day of ——, BETWEEN A. B., of &c. [*vendor*], and D. B. his wife, of the one part, and C. D., of &c., [*purchaser*], a bachelor (*a*), of the other part, Witnesseth. WITNESSETH, that, in consideration of the sum of Consideration. £—— to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments intended to be hereby granted, (the receipt whereof Receipt. the said A. B. doth hereby acknowledge), he the Operative words. said A. B. doth hereby grant, and she the said D. B., for the purpose of releasing her right of dower, and with the concurrence of the said A. B., doth hereby release, unto the said C. D., his heirs and assigns, ALL THOSE —— and hereditaments Parcels. situate in the parish of ——, in the county of ——, delineated in the plan in the margin of

(*a*) To avoid future questions on the title, as to whether a purchaser was or was not married before the 1st of January, 1834, to a woman living at the time of his purchase, it is well to state the fact in the purchase-deed, by describing him as a bachelor or widower, or stating that he has been married since the 1st of January, 1834.

these presents, and specified in the schedule hereunder written, TOGETHER with all commons, ways, lights, sewers, watercourses, rights, privileges, easements, commodities, and appurtenances whatsoever, to the said hereditaments, or any part thereof, belonging or appertaining, or with the same or any part thereof now or heretofore held, used, or enjoyed, or reputed as part or member thereof, or appurtenant thereto (*a*), AND all the estate and interest of the said A. B. and D. B. in the said premises, and every part thereof, TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns. AND IT IS HEREBY DECLARED, that no widow of the said C. D. shall be entitled to dower out of the said premises. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B., or any of his ancestors, done, or knowingly permitted or suffered, they the said A. B. and D. B. now have power to grant and release the said premises unto and to the use of the said C. D., his heirs and assigns, free from incumbrances (*b*); AND THAT he the said

General words.

Habendum.

Covenants by vendor, for right to convey, free from incumbrances;

and for further assurance.

(*a*) These general words should be varied by leaving out "commons," "lights," &c., or the like, which may not be appropriate to the property conveyed, and adding other words (if any) which may be required.

(*b*) The words "free from incumbrances" are governed by the restriction in the beginning of the covenant as to the

A. B. and his heirs, and all other persons lawfully or equitably claiming through or in trust for him, or any of his ancestors, will, at all times, at the cost of the said C. D., his heirs or assigns, do and execute all such acts and assurances, for further or better assuring all or any of the said premises to the use of the said C. D., his heirs and assigns, as by him or them shall be reasonably required. IN WITNESS &c. (*a*).

THE SCHEDULE to which the above-written INDENTURE refers.

IV.

CONVEYANCE *by a* MARRIED WOMAN *seised in Fee to* USES *to bar* DOWER.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c., and D. B. his wife [*vendors*], of the first part, C. D., of &c., [*purchaser*], of the second part, and E. F., of &c. [*trustee*], of the third part,

Witnesseth. WITNESSETH, that, in consideration of the sum of

Considera-tion. £—— to the said A. B. and D. B. this day paid by the said C. D., for the purchase of the heredi-

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acts and deeds of A. B. and his ancestors, so that it is unnecessary further to qualify them.

(*a*) This deed will have to be acknowledged by the vendor's wife.

taments intended to be hereby granted, (the receipt whereof the said A. B. and D. B. do hereby acknowledge), she the said D. B., with the concurrence of the said A. B., doth hereby grant and dispose of, and he the said A. B. doth hereby grant and confirm unto the said C. D. and his heirs [*parcels—general words, supra, p.* 96], TO HOLD the said premises UNTO the said C. D. and his heirs, TO SUCH USES, for such estates, and in such manner as the said C. D. shall by any deed or deeds appoint. AND IN DEFAULT of and until such appointment, and so far as no such appointment shall extend, TO THE USE of the said C. D. and his assigns during his life, without impeachment of waste; AND AFTER the determination of that estate by any means in his lifetime, TO THE USE of the said E. F. and his heirs during the life of the said C. D., in trust for him and his assigns; AND AFTER the determination of that estate, TO THE USE of the said C. D., his heirs and assigns, for ever. AND IT IS HEREBY DECLARED, that no widow of the said C. D. shall be entitled to dower out of the said premises. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said D. B., or any of her ancestors, or the said A. B., done, or knowingly permitted or suffered, they the said D. B. and A. B. now have power to grant and dispose of the said premises, to the uses and in manner aforesaid,

Receipt.

Operative words.

Habendum.

To such uses as purchaser shall appoint.

In default, to purchaser for life.

Limitation to trustee during life of purchaser in trust for him.

Remainder to purchaser in fee.

Declaration by purchaser to bar his widow of dower.

Covenants by vendor for right to convey free from incumbrances,

and for further assurance.

free from incumbrances; AND THAT she the said D. B. and her heirs, and the said A. B., and all other persons lawfully or equitably claiming through or in trust for the said D. B., or any of her ancestors, or the said A. B., will, at all times, at the cost of the said C. D., his heirs, appointees, or assigns, do and execute all such acts and assurances, for further or better assuring all or any of the said premises to the uses and in manner aforesaid, as by the said C. D., his heirs, appointees, or assigns, shall be reasonably required. IN WITNESS &c. (*a*).

THE SCHEDULE to which the above-written INDENTURE refers.

(*a*) This deed will have to be acknowledged by the married woman, the vendor.

V.

CONVEYANCE *by* APPOINTMENT, *and* GRANT *in* FEE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], of the one part, and C. D., of &c. [*purchaser*], of the other part, WITNESSETH, that, in consideration of the sum of £—— to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments intended to be hereby appointed and granted, (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B., in exercise of a power given him, by an indenture dated the —— day of —— (*a*), and ex- Parties. Witnesseth. Consideration. Receipt. Appointment.

(*a*) It is usual to specify the mode of assurance more particularly; thus, "by an indenture of release grounded on a lease for a year;" *or*, "by an indenture of release made in pursuance of the act for rendering a release as effectual for the conveyance of freehold estates as a lease and release by the same parties;" *or*, "by an indenture of feoffment perfected by livery of seisin;" *or*, "by an indenture of bargain and sale perfected by inrolment, and by a recovery suffered in pursuance of the same indenture," or the like, and to say, "were *conveyed, and assured, and* limited," &c.; but, for purposes of conveyance, it is sufficient to say simply, as in the text, that by an indenture, bearing a certain date, and expressed to be made be-

pressed to be made between [*parties*], and of every other power enabling him in this behalf, doth hereby direct, limit, and appoint (*a*), that ALL THOSE the —— and hereditaments hereinafter mentioned, and intended to be hereby granted, with the appurtenances as hereinafter mentioned, shall henceforth go and remain TO THE USE of the said C. D., his heirs and assigns (*b*). AND THIS INDENTURE

Witnesseth secondly.

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tween certain parties, the hereditaments were limited to the uses; the precise mode of the assurance is of no moment, and the limitations may with sufficient accuracy be said to be by that instrument alone which contains the limitations. The phrase "expressed to be" *made* may be omitted when it is known that the instrument was executed by all parties.

(*a*) In exercising a power, it is best to take the operative words given in the power. The power supposed in the text requires no formalities; but, in exercising a power which does require formalities, it is unnecessary to follow the usual course of making the witnessing part describe the intended mode of execution. Nothing is gained by it, for, if the attestation is wrong, the right description in the deed will not rectify the mistake. The directions as to the execution of the deed may, if need be, be written as a marginal note.

(*b*) If there is no reason (as there very seldom is) to suppose that the power has been extinguished, the conveyance may be by appointment alone, omitting the second witnessing part and the words "and granted." This will save the lease-for-a-year stamp. This course should always be adopted if the power is recent in its creation, as when a mortgage is made immediately after the conveyance, or the like. There may, however, be an objection to it when the power is not recent in its creation; for, if the appointor has made a lease which has taken effect

ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, [*parcels—general words, supra, p.* 96], TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns. AND IT IS HEREBY DECLARED, that no widow of the said C. D. shall be entitled to dower out of the said premises. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B. done, or knowingly permitted or suffered, he the said A. B. now hath

Grant.

Habendum to purchaser in fee.

Covenants by vendor, for right to appoint and convey, free from incumbrances;

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out of his estate, the reversion taken by the appointee is not the reversion immediately expectant on the lease to which the rent and covenants are incident. If the conveyance is by appointment alone, instead of reciting the uses subsequent to the power, say, "and in default, &c., to certain other uses." There is no substantial objection, when the property is limited to uses to bar dower in favour of the vendor, to taking the conveyance from him, as in Precedent III., (omitting the wife), either reciting or not reciting his title; for the conveyance of his estates will extinguish the power, or preclude him from exercising it. The usual objection to this method is, that it leaves untouched the estate of the trustee; but this estate cannot be considered of more importance than that of trustees to preserve contingent remainders, and the latter is never got in. The advantages of omitting the appointment are, that the deed is shortened, and the question as to the rent and covenants of a lease granted out of the vendor's estate is got rid of.

full power to appoint and grant the said premises to the use of the said C. D., his heirs and assigns, free from incumbrance; AND THAT he the said A. B. and his heirs, and all other persons lawfully or equitably claiming through or in trust for him, will, at all times, at the cost of the said C. D., his heirs or assigns, do and execute all such acts and assurances, for further or better assuring all or any of the said premises to the use of the said C. D., his heirs and assigns, as by him or them shall be reasonably required. IN WITNESS &c.

—for further assurance.

THE SCHEDULE to which the above-written INDENTURE refers.

VI.

CONVEYANCE *by* APPOINTMENT, *and* GRANT *to* USES *to bar* DOWER.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*vendor*], of the first part; C. D., of &c., [*purchaser*], of the second part; and E. F., of &c., [*trustee*], of the third part, WITNESSETH, that, in consideration of the sum of £—— to the said A. B. this day paid by the said C. D. for the purchase of the hereditaments intended to be hereby appointed and granted, (the receipt whereof the said A. B.

Witnesseth.

Consideration.

Receipt.

doth hereby acknowledge), he the said A. B., in exercise of a power given him by an indenture dated the —— day of ——, and expressed to be made between [*parties*], and of every other power enabling him in this behalf, doth hereby direct, limit, and appoint, that ALL THOSE the —— and hereditaments hereinafter mentioned, and intended to be hereby granted, with the appurtenances, as hereinafter mentioned, shall henceforth go and remain to the uses hereinafter limited. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B. doth hereby grant unto the said C. D. and his heirs [*parcels—general words, supra, p.* 96], TO HOLD the said premises unto the said C. D. and his heirs, TO THE USES hereinafter limited. AND IT IS HEREBY AGREED AND DECLARED, that the direction, limitation, and appointment, and the grant hereinbefore contained, shall respectively operate and enure TO SUCH USES, for such estates, and in such manner as the said C. D. shall by any deed or deeds appoint. AND IN DEFAULT of and until such appointment, and so far as no such appointment shall extend, TO THE USE of the said C. D. and his assigns during his life, without impeachment of waste; AND AFTER the determination of that estate by any means in his lifetime, TO THE USE of the said E. F. and his heirs during the life of the said C. D., in trust for him and his assigns; AND AFTER the determination of that estate, TO THE USE of the said C. D., his heirs and assigns, for

Appointment.

Witnesseth secondly. Grant.

Habendum.

Limitation to such uses as purchaser shall appoint.

In default, to purchaser for life;

to trustee during life of purchaser, in trust for him;

to purchaser in fee.

Declaration by purchaser to bar his widow of dower.

ever. And it is hereby declared, that no widow of the said C. D. shall be entitled to dower out of the said premises.

Covenants for title;

And the said A. B. doth hereby, for himself, his heirs and assigns, covenant with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B. done, or knowingly permitted or suffered, he the said A. B. now hath power to appoint and grant the said premises to the uses and in manner aforesaid, free from incumbrance.

—for further assurance.

And that the said A. B. and his heirs, and all other persons lawfully or equitably claiming through or in trust for him, will, at all times, at the cost of the said C. D., his heirs, appointees, or assigns, do and execute all such acts and assurances for further or better assuring all or any of the said premises to the uses and in manner aforesaid, as by the said C. D., his heirs, appointees, or assigns, shall be reasonably required. In witness &c.

THE SCHEDULE to which the above-written Indenture refers.

VII.

Conveyance *by* Mortgagor *and* Mortgagee.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagee*], of the first part; C. D., of &c. [*mortgagor and vendor*], a widower (*a*), of the second part; and E. F., of &c., a bachelor (*b*) [*purchaser*], of the third part. WHEREAS, by an indenture dated the —— day of —— (*c*), and expressed to be made between the said C. D., of the one part, and the said A. B., of the other part, in consideration of the sum of £—— by the said A. B. paid to the said C. D., the said C. D. did release unto the said A. B., his heirs and assigns, the hereditaments intended to be hereby granted, To hold the same unto and to the use of the said A. B., his heirs and assigns, subject to a proviso

Parties.

Recital of mortgage.

(*a*) If the vendor be a widower or bachelor, or has been married since the 1st of January, 1834, the fact may properly be stated to avoid the question being raised on a subsequent investigation of the title. In the case in the text the right of dower, if it had existed at all, must of course have existed before the date of the mortgage which placed the legal estate in the mortgagee.

(*b*) See supra, p. 96, n. (*a*). If it is desired to convey to uses to bar dower, this Precedent may be varied by a reference to Precedent IV., supra, p. 98.

(*c*) See supra, p. 101, n. (*a*).

in the indenture now in recital contained for redemption of the same premises on payment by the said C. D., his heirs, executors, administrators, or assigns, unto the said A. B., his executors, administrators, or assigns, of the sum of £——, with interest for the same after the rate and at the time therein mentioned. And whereas the said C. D. has contracted with the said E. F. for the sale to him of the said hereditaments, and the inheritance thereof in fee-simple in possession, free from incumbrances, at the price of £——. And whereas the said sum of £—— is now owing to the said A. B., but all interest for the same has been paid up to the date of these presents. And whereas it has been agreed that the said sum of £—— shall be paid off out of the said purchase-money of £——, and that the said A. B. shall join in these presents in manner hereinafter appearing. Now this indenture witnesseth, that, in pursuance of the said contract and agreement, and in consideration of the sum of £—— to the said A. B. this day paid by the said E. F. at the request of the said C. D., (the receipt whereof the said A. B. doth hereby acknowledge), and in consideration of the sum of £—— to the said C. D. this day paid by the said E. F., (the payment and receipt respectively of which said sums of £—— and £——, making together the said purchase-money of £——, the said C. D. doth hereby acknowledge), he the said A. B., by the direction of the said C. D., doth hereby grant, and he

Contract for sale.

That mortgage-money is still due,

and is to be paid off out of purchase-money.

Witnesseth.

Consideration.

Receipt.

Operative words.

the said C. D. doth hereby grant and confirm unto the said E. F. and his heirs, [*parcels—general words, supra, p.* 96], TO HOLD the said premises UNTO the said E. F., his heirs and assigns, TO THE USE of the said E. F., his heirs and assigns, discharged from the said sum of £——, and all interest for the same, and all claims under or by virtue of the said indenture of the —— day of ——. AND IT IS HEREBY DECLARED, that no widow of the said E. F. shall be entitled to dower out of the said premises. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said E. F., his heirs and assigns, that he the said A. B. hath not done, or knowingly permitted or suffered, any thing whereby the said premises, or any part thereof, are, is, or can be impeached, encumbered, or affected in title or otherwise. [*Mortgagor's covenants for right to convey, and for further assurance, as in Precedent III.* (*supra, p.* 97), *except that the first covenant will be,* "that they the said A. B. and C. D. now have power to grant," *&c.*] IN WITNESS &c.

Habendum.

Covenant by mortgagee against incumbrances.

THE SCHEDULE to which the above-written INDENTURE refers.

VIII.

CONVEYANCE *by the* HEIRS *and* EXECUTORS *of a* MORTGAGEE *on a* SALE *under a* POWER *of* SALE.

Parties.

THIS INDENTURE, made &c., BETWEEN &c. [*heir-at-law of mortgagee*], of the first part; C. D., of &c., and E. F., of &c., [*executors of mortgagee and vendors*], of the second part; and G. H., of &c. [*purchaser*], of the third part. WHEREAS &c., [*recital of the mortgage, ut supra, p.* 107. *Recite, also, the power to sell, the proviso that the receipt of the mortgagee should be a discharge, and the clause exempting the purchaser from seeing to the events having happened on which the power arises, literally, or proceed thus*:—"AND it was by the said indenture provided, that it should be lawful for the said [*mortgagee*], his executors, administrators, or assigns, in certain events, to sell and dispose of the said hereditaments, and that, on a sale by the executors or administrators of the said [*mortgagee*], the heirs of the said [*mortgagee*] should convey the legal estate as the said executors or administrators should direct, and that the receipt of the said [*mortgagee*], his executors or administrators, should be a sufficient discharge to the purchaser, and that the sale should be good as to a purchaser, whether the events had or had not hap-

Recital of mortgage;

pened on which the power of sale was to arise, and notwithstanding any impropriety or irregularity in the sale."] AND WHEREAS the said [*mortgagee*] duly made and signed his last will, dated the —— day of ——, and thereby appointed the said C. D. and E. F. executors thereof, but did not thereby devise the legal estate in the said hereditaments, and died leaving the said A. B. his heir-at-law, and without having revoked or altered his said will, and the same was proved by the said C. D. and E. F. in the —— court of ——, on the —— day of ——. AND WHEREAS the said C. D. and E. F., in exercise of the said power of sale, have contracted with the said G. H. for the sale to him of the said hereditaments, and the inheritance thereof in fee simple in possession, free from incumbrances, at the price of £——. NOW THIS INDENTURE WITNESSETH, that, for effectuating the said sale, and in consideration of the sum of £—— to the said C. D. and E. F. this day paid by the said G. H., (the receipt whereof the said C. D. and E. F. do hereby acknowledge), he the said A. B., by the direction of the said C. D. and E. F., doth hereby grant, and they the said C. D. and E. F. do hereby release unto the said G. H. and his heirs, [*parcels,—general words, supra, p.* 96], TO HOLD the said premises UNTO the said G. H., his heirs and assigns, TO THE USE of the said G. H., his heirs and assigns, discharged from the said sum of £——, and all interest for the same,

—of will and death of mortgagee;

—of contract for sale.

Witnesseth.

Habendum.

and all equity of redemption, and all claims under or by virtue of the said indenture of the —— day of ——. AND EACH of them the said A. B., C. D., and E. F., so far as relates to his own acts and deeds, doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said G. H., his heirs and assigns, that they the said A. B., C. D., and E. F., respectively, have not done, or knowingly permitted or suffered, any thing whereby the said premises, or any part thereof, can be impeached, encumbered, or affected in title, or otherwise. IN WITNESS &c.

Covenant against incumbrances.

THE SCHEDULE to which the above-written INDENTURE refers.

IX.

CONVEYANCE *under a* POWER *of* SALE *in a* SETTLEMENT.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., and C. D., of &c. [*the vendors, the donees of the power of sale*], of the first part; E. F., of &c. [*tenant for life, whose consent is required to the exercise of the power of sale*], of the second part; and G. H., of &c. [*purchaser*] (*a*), of the

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(*a*) See supra, p. 96, n. (*a*).

third part. WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], (being a settlement made in consideration of the marriage then intended and shortly afterwards solemnised between the said —— and ——), divers hereditaments, including the hereditaments intended to be hereby appointed, were limited to certain uses; and by the said indenture it was provided, that, [*recite literally the power to sell, to revoke the old and appoint new uses, and to give receipts to purchasers, or proceed thus:*] it should be lawful for the said A. B. and C. D., with the consent of the said E. F., to be testified by a writing under his hand and seal, to sell the said hereditaments thereby limited, or any of them, and, for the purpose of effectuating such sale with the consent aforesaid, to revoke the uses thereby declared of the hereditaments so sold, and to appoint the same to the purchasers, or as they should direct; and it was thereby also declared, that the receipts of the said A. B. and C. D. for the purchase-money should be sufficient discharges to purchasers (*a*). AND WHEREAS the said A. B. and C. D., in exercise of the said power of sale, and with the consent of the said E. F. (*b*), have contracted with the said

Recital of the settlement;

—of the contract for sale.

(*a*) Of course this recital will be varied according to the terms of the power; or the deed may be framed without recitals, like Precedent V., supra, p. 101.

(*b*) It is usual to express the manner of testifying consent; but, as this is of no real use, it is omitted.

G. H. for the sale to him of the said hereditaments intended to be hereby appointed, and the inheritance thereof in fee-simple in possession, free from incumbrances, at the price of £——.

Witnesseth.

NOW THIS INDENTURE WITNESSETH, that, for

Revocation of old uses, and appointment to purchaser.

effectuating the said sale, and in consideration of the sum of £—— to the said A. B. and C. D. this day paid by the said G. H., (the receipt whereof the said A. B. and C. D. do hereby acknowledge), and in exercise of the said power given them by the hereinbefore-recited indenture as aforesaid, and of every other power enabling them in this behalf, they the said A. B. and C. D., with the consent of the said E. F., do hereby revoke all the uses by the hereinbefore-recited indenture limited, so far as relates to the hereditaments intended to be hereby appointed, and do hereby direct, limit, and appoint (*a*), that [*parcels—general words, supra, p.* 96, *omitting the estate clause*] shall henceforth go, remain, and be TO THE USE of the said G. H., his heirs and

Covenants by the donees of the power against incumbrances.

assigns (*b*). AND EACH of them the said A. B. and C. D., so far as relates to his own acts and deeds, doth hereby, for himself, his heirs, execu-

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(*a*) The words of the power are, as far as possible, to be used: if no words are prescribed, (as where the power to revoke and appoint is implied only from the power to sell), the word "appoint" alone is the proper word.

(*b*) If the conveyance is to be to uses to bar dower, see the form, supra, p. 99; and alter the covenants to correspond. (See supra, pp. 99, 100).

tors, and administrators, COVENANT with the said G. H., his heirs and assigns, that they the said A. B. and C. D. respectively have not made or done, or knowingly permitted or suffered, any thing whereby they are prevented from exercising in manner hereinbefore appearing the power hereinbefore expressed to be exercised, or whereby the said premises hereinbefore expressed to be appointed, or any part thereof, are, is, or can be impeached, encumbered, or affected in title, or otherwise. AND THE SAID E. F., doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs and assigns, that, notwithstanding any thing by him the said E. F., or any of his ancestors, done, or knowingly permitted or suffered, the said A. B. and C. D. now have full power, with the consent of the said E. F., to direct, limit, and appoint the said premises to the use of the said G. H., his heirs and assigns, free from incumbrances (*a*); AND THAT the said A. B. and C. D., and all persons claiming through them respectively, and he the said E. F., and all persons lawfully or equitably claiming through or in trust for him or any of his ancestors, will, at all times, do and execute all such acts and assurances for further or better assuring all or any of the said premises to the use of the said G. H., his heirs and assigns, as by him or

Covenants by the tenant for life for right to convey;

and for further assurance.

(*a*) See supra, p. 97, n. (*b*).

them shall be reasonably required. IN WITNESS &c.

THE SCHEDULE to which the above-written INDENTURE refers.

X.

COVENANT *to surrender* COPYHOLDS *to a* PURCHASER.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], of the one part, and C. D. of &c. [*purchaser*], of the other part,

Witnesseth. WITNESSETH, that, in consideration of the sum

Consideration. of £—— to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments hereinafter covenanted to be surrendered, (the

Receipt. receipt whereof the said A. B. doth hereby ac-

Covenant. knowledge), he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D. and his heirs, that he the said A. B., or his heirs, and all other necessary parties, (if any), will, at or before the next court for the manor of ——, in the county of ——, well and effectually surrender into the hands of the lord of the said manor, according

Parcels. to the custom thereof, ALL THOSE the —— and hereditaments situate in the parish of ——, in the county of ——, delineated in the plan in the

margin of these presents, and specified in the schedule hereunder written, (all which —— and hereditaments are in the court-rolls of the said manor described as follows; (that is to say), [*description from the rolls (a)—general words, supra, p. 97, without the* "all the estate" *clause*]), TO THE USE of the said C. D., his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, heriots, suits, and services. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B., or any of his ancestors, done, or knowingly permitted or suffered, he the said A. B. now hath power to surrender the said premises to the use of the said C. D., his heirs and assigns, in manner aforesaid, free from incumbrances (*b*); AND THAT he the said A. B. and his heirs, and all other persons lawfully or equitably claiming through or in trust for him or any of his ancestors, will, at all times, at the cost of the said C. D., his heirs or assigns, do and execute all such acts and assurances for further or better assuring all or any of the said

Covenant by vendor for right to convey, free from incumbrances;

and for further assurance.

(*a*) It is hardly necessary to observe, that the description on the rolls is frequently incorrect; and that, therefore, in the deed of covenant, it is often requisite to give both the true and the manorial description.

(*b*) See supra, p. 97, n. (*b*).

premises to the use of the said C. D., his heirs and assigns, as by him or them shall be reasonably required. IN WITNESS &c.

THE SCHEDULE to which the above-written INDENTURE refers.

XI.

CONVEYANCE *of a* CONTINGENT ESTATE (*a*) *in* COPYHOLDS.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], of the one part, and C. D., of &c. [*purchaser*], of the other part.

Recital of estate; WHEREAS [*recite the instrument by which the estate was created, and the subsequent events formally, or proceed in this manner:*] under the will, dated the —— day of——, of ——, deceased, and of several subsequent events, the said A. B., as one of the —— children of ——, his mother, is now presumptively entitled in reversion expectant on the death of the said ——, and, in the event of his surviving her, to the inheritance, according to the custom of the manor of ——, in the county of ——, of one —— share of the copyhold hereditaments hereinafter mentioned, and will, in the event aforesaid, on the death of any one, or more, or all

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(*a*) See supra, p. 68.

of his brothers and sisters in the lifetime of the said ——, become entitled to the absolute inheritance, according to the custom of the said manor, of a further share or shares, or of the entirety of the same hereditaments. AND WHEREAS the said A. B. has contracted with the said C. D. for the sale to him of the said share, shares, or entirety to which he the said A. B. is, or will be in the event or events aforesaid, entitled, and the inheritance thereof, according to the custom of the said manor, free from incumbrances, except the accustomed rents, fines, heriots, suits, and services, but subject to the estate for life therein of the said ——, and to the contingency of the estate and interest of the said A. B. in the same hereditaments being defeated by his death in the lifetime of the said ——. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said contract, and in consideration of the sum of £—— to the said A. B. this day paid by the said C. D. (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby grant and dispose of (*a*), unto the said C. D., his heirs and assigns, ALL THAT the —— share, and all and every other the shares, share, or entirety to which the said A. B. is or will be, in the event of his surviving the said ——, entitled, of [*parcels—general words, supra, p.* 96], AND ALL the estate and interest of the said A. B. in the

—of contract for sale.

Witnesseth.

Consideration.

Receipt.

Operative words.

Parcels.

(*a*) See the words of sect. 6 of the statute, supra, p. 84.

Habendum. said premises and every part thereof, TO HOLD the said premises UNTO AND TO THE USE of the said C. D., his heirs and assigns, subject to the estate for life therein of the said ——, and to the contingency of the estate and interest of the said A. B. in the said hereditaments being defeated by his death in the lifetime of the said ——, and according to the custom of the said manor, and by and under the accustomed rents, fines, heriots, suits, and services. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his heirs and assigns, that, notwithstanding any thing by the said A. B., or the said [*the testator*], or any of his ancestors, done, or knowingly permitted or suffered, he the said A. B. now hath power to grant and dispose of the said premises unto and to the use of the said C. D., his heirs and assigns, subject as and in manner aforesaid, but free from incumbrances (*a*); AND THAT he the said A. B. and his heirs, and all other persons lawfully or equitably claiming through or in trust for him, or the said [*the testator*], or any of his ancestors, will, at all times, at the cost of the said C. D., his heirs or assigns, do and execute all such acts and assurances for further or better assuring all or any of the said premises unto and to the use of the said C. D., his heirs and assigns, subject as and in manner afore-

Covenants by vendor for right to convey, free from incumbrances;

and for further assurance.

(*a*) See supra, p. 97, n. (*b*).

said, as by him or them shall be reasonably required. IN WITNESS &c.

THE SCHEDULE to the above-written INDENTURE refers.

XII.

ASSIGNMENT *of* LEASEHOLDS *on a* SALE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], of the one part; and C. D., of &c. [*purchaser*], of the other part. WHEREAS, by an indenture of lease, dated the —— day of —— and expressed to be made between [*parties*], all that &c. [*parcels from the lease*], with their appurtenances, were demised to the said G. H., his executors, administrators, and assigns, for the term of —— years from the —— day of ——, at the yearly rent of £——, and subject to certain covenants and conditions therein contained, and by the lessee, his executors, administrators, and assigns, to be observed and performed (*a*). AND WHEREAS the said premises are now vested in the said A. B.

Parties.

Recital of lease;

—of its having become vested in vendor;

(*a*) In assigning leaseholds, the lease is always recited in the form in the text, the parcels being set out in the recital of the lease. In stating the parcels, the exceptions (if any) must either be set out or mentioned, so as to shew what was actually demised.

for the residue of the said term of —— years (*a*).

—of the contract for sale.

And whereas the said A. B. hath contracted with the said C. D. for the sale to him, at the price of £——, of the premises aforesaid, for the residue of the said term, and subject to the rent, covenants, and conditions aforesaid, but free from all other incumbrances.

Witnesseth.

Now this indenture witnesseth, that, in pursuance of the said contract, and in consideration of the sum of £—— to the said A. B. this day paid by the said C. D., (the receipt whereof the said A. B. doth hereby acknowledge),

Consideration.

Receipt.

Assignment.

he the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, all that the said ——, hereditaments, and premises by the said indenture of the —— day of —— [*the lease*] expressed to be demised (*b*), with their rights, easements, and appurtenances, and all the estate and interest of the said A. B. in

Parcels.

(*a*) It is usual particularly to refer to the last assignment, viz. that to the vendor; but, as nothing is gained by this reference it has been omitted.

(*b*) If houses, or other buildings, have been erected since the date of the lease, so as to vary the description of the property, they should be mentioned thus:—

"together with all those —— messuages and buildings which have been built on the said ground since the date of the said lease,"

or in some similar way. If the houses are numerous, they may be placed in a schedule, and referred to accordingly: this is particularly convenient when it is desired to shew the tenancy and rental.

the said premises, and every part thereof, TO HOLD the said premises unto the said C. D., his executors, administrators, and assigns, for the residue of the said term of —— years, at the rent and subject to the covenants and conditions in the said lease reserved and contained, and henceforth by the lessee, his executors, administrators, and assigns, to be paid, observed, or performed. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his executors, administrators, and assigns, that the rent, covenants, and conditions, in the said lease reserved and contained, and by the lessee, his executors, administrators, and assigns, to be paid, observed, or performed, have been paid, observed, and performed up to the date of these presents; AND THAT, notwithstanding anything by the said A. B. done, or knowingly suffered (*a*), he the said A. B. now hath power to assign the said premises unto the said C. D., his executors, administrators, and assigns, for the term, and subject as and in manner aforesaid, free from incumbrances (*b*); AND THAT he the said A. B., his executors and administrators, and all other persons lawfully or equitably claiming through or in trust for him, will, at all times, at the cost of the

Habendum.

Covenants by vendor, that rent and covenants have been paid and observed;

—for right to assign, free from incumbrances;

and for further assurance.

(*a*) It is usual to insert a covenant that the lease is valid; but this seems implied by the covenant for right to assign, and is, therefore, omitted.

(*b*) See supra, p. 97, n. (*b*).

said C. D., his executors, administrators, or assigns, do and execute all such acts and assurances for further or better assuring the said premises unto the said C. D., his executors, administrators, and assigns, for the then residue of the said term, subject as and in manner aforesaid, as by the said C. D., his executors, administrators, or assigns, shall be reasonably required. And the said C. D., doth hereby for himself, his heirs, executors, and administrators, covenant with the said A. B., his executors and administrators, that he the said C. D., his executors, administrators, or assigns, will henceforth pay the said yearly rent of £—— by the said lease reserved, and observe and perform all the covenants and conditions therein contained, and by the lessee, his executors, administrators, or assigns, henceforth to be observed or performed, and will keep the said A. B., his heirs, executors, and administrators, indemnified against all actions, suits, expenses, and claims on account of the non-payment of the said rent, or any part thereof, or the breach, or non-observance, or non-performance of the said covenants and conditions, or any of them (*a*). In witness &c.

Covenants by purchaser to pay rent and observe covenants,

and indemnify vendor in respect thereof.

(*a*) Every vendor of a lease is entitled to this covenant. (See 3 Martin's Conveyancing, 86).

XIII.

CONVEYANCE *of* FREEHOLDS, *and* COVENANT *to* SURRENDER COPYHOLDS *to a* PURCHASER.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], a widower (*a*), of the one part, and C. D., of &c. [*purchaser*], a bachelor (*b*), of the other part, WITNESSETH, that, in consideration of the sum of £—— to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments intended to be hereby granted, (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, ALL THOSE —— and hereditaments situate in the parish of ——, in the county of ——, delineated in the plan in the margin of these presents, and therein coloured ——, and specified in the first part of the schedule hereunder written (*c*), [*general words, supra,*

Parties.

Witnesseth.

Conveyance of freeholds.

Parcels.

(*a*) See supra, p. 107, n. (*a*).

(*b*) See supra, p. 96, n. (*a*).

(*c*) If, as is often the case, the freeholds and copyholds cannot be distinguished, the freehold parcels may run thus:—

"ALL SUCH PARTS of the —— and hereditaments situate in the parish of ——, in the county of ——, delineated in the plan in the margin of

Habendum. *p.* 97], TO HOLD the said premises unto the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns. AND IT IS HEREBY DECLARED, that no widow of the said C. D. shall be entitled to dower out of the said premises. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the sum of £—— to the said A. B. this day paid by the said C. D., for the purchase of the hereditaments hereinafter covenanted to be surrendered, (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D. and his heirs, that he the said A. B., or his heirs, and all other necessary parties, (if any), will, at or before the next court held for the manor of ——, in the county of ——, well and effectually surrender into the hands of the lord of the said manor, according to the custom thereof, ALL THOSE —— and hereditaments, situate in the parish aforesaid, delineated in the plan aforesaid, and therein coloured ——, and specified in the second part of the said schedule hereunder written, (all which said —— and hereditaments are in the court-rolls of

Declaration to bar dower.

Witnesseth secondly. Covenant to surrender copyholds.

Parcels.

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these presents, and specified in the schedule hereunder written, as are of freehold tenure, (all which parts, so far as the same are known, are distinguished in the said plan by the colour ——, and are indicated in the said schedule)."

the said manor described as follows (*a*); (that is to say), [*description from the rolls—general words, supra, p.* 97, *without the estate clause*]), TO THE USE of the said C. D., his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, heriots, suits, and services. AND IT IS HEREBY DECLARED, that the aforesaid freehold and copyhold hereditaments were contracted to be sold by the said A. B. to the said C. D. at the sum of £——, (the aggregate of the aforesaid sums of £—— and £——), as an entire price for the whole, and that the aforesaid division and apportionment thereof are made only for the purposes of the act imposing an ad-valorem stamp duty upon conveyances upon sales. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that, notwithstanding anything by the said A. B. or any of his ancestors done, or knowingly suffered, he the

To the use of the purchaser.

Declaration that the price is apportioned for the purposes of the Stamp Acts.

Covenants by vendor for right to convey free from incumbrances;

(*a*) When the freeholds and copyholds cannot be distinguished, the copyhold parcels may run thus:—

"ALL SUCH PARTS of the said —— and hereditaments delineated in the plan aforesaid, and specified in the schedule aforesaid, as are of copyhold tenure, (all which parts, so far as the same are known, are distinguished in the said plan by the colour ——, and are indicated in the said schedule, and in the court-rolls of the said manor are described as follows; (that is to say),"

said A. B. now hath power to grant the said premises hereinbefore expressed to be hereby granted, and to surrender the said premises hereinbefore covenanted to be surrendered to the use of the said C. D., his heirs and assigns, in manner aforesaid, free from incumbrances (*a*); AND THAT he the said A. B. and his heirs, and all other persons lawfully or equitably claiming through or in trust for him or any of his ancestors, will, at all times, at the cost of the said C. D., his heirs or assigns, do and execute all such acts and assurances for further or better assuring all or any of the said premises respectively to the use of the said C. D., his heirs and assigns, as by him or them shall be reasonably required. IN WITNESS &c.

—for further assurance.

THE SCHEDULE to which the above-written INDENTURE refers.

Part I. Part. II.

(*a*) See supra, p. 97, n. (*b*).

XIV.

CONVEYANCE *of* FREEHOLDS *and* LEASEHOLDS *to a* PURCHASER.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], who has been married since the 1st day of January, 1834 (*a*), of the one part, and C. D., of &c. [*purchaser*], a bachelor (*b*), of the other part, [*recital of the lease, and of its being vested in the vendor, supra, p.* 121]. AND WHEREAS the said A. B. has contracted with the said C. D. for the sale to him, at the price of £——, of the hereditaments intended to be hereby granted, and the inheritance thereof, in fee-simple in possession, free from incumbrances, and also of the said leasehold premises for the residue of the said term, and subject to the rent, covenants, and conditions aforesaid, but free from all other incumbrances. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said contract, and in consideration of the sum of £—— to the said A. B. this day paid by the said C. D., (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, [*freehold parcels, and general words, supra, p.* 96, *with the addition of the refer-*

Parties.

Contract for sale.

Witnesseth.

Conveyance of freeholds.

(*a*) See supra, p. 107, n. (*a*). (*b*) See supra, p. 96, n. (*a*).

ence to a distinguishing colour on the plan, see supra, p. 125], TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said contract, and for the consideration aforesaid, he the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the said ——, hereditaments, and premises by the said indenture of the —— day of —— [*the lease*] expressed to be demised (*a*), and which are delineated in the said plan in the margin of these presents, and therein coloured ——, with their rights, easements, and appurtenances, AND ALL the estate and interest of the said A. B. in the said premises, and every part thereof, TO HOLD the said premises UNTO the said C. D., his executors, administrators, and assigns, for the residue of the said term of —— years, at the rent and subject to the covenants and conditions in the said lease reserved and contained, and henceforth by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his heirs, executors, administrators, and assigns respectively, that all and singular the rents, covenants, and conditions in the said lease reserved

Habendum.

Witnesseth secondly.

Assignment of leaseholds.

Habendum.

Covenants by vendor, that rents and covenants have been paid and performed;

(*a*) See supra, p. 122, n. (*b*).

and contained, and by the lessee, his executors, administrators, and assigns, to be paid, observed, or performed, have been paid, observed, and performed up to the date of these presents; AND THAT, notwithstanding anything by the said A. B. or any of his ancestors done, or knowingly suffered, he the said A. B. now hath power to grant the said premises hereinbefore expressed to be hereby granted to the use of the said C. D., his heirs and assigns, in manner aforesaid, free from incumbrances, and to assign the said premises hereinbefore expressed to be assigned unto the said C. D., his executors, administrators, and assigns, for the term, and subject as and in manner aforesaid, free from incumbrances; AND THAT he the said A. B., his heirs, executors, and administrators, and all other persons lawfully or equitably claiming through or in trust for him or any of his ancestors, will, at all times, at the cost of the said C. D., his heirs, executors, administrators, or assigns, do and execute all such acts and assurances for further or better assuring all or any of the said premises hereinbefore expressed to be hereby granted to the use of the said C. D., his heirs and assigns, and all or any of the said premises hereinbefore expressed to be assigned unto the said C. D., his executors, administrators, and assigns, for the then residue of the said term of —— years, subject as and in manner aforesaid, as by the said C. D., his heirs, executors, administrators, and assigns, respectively, shall be reasonably required. [*Cove-*

—for right to convey free from incumbrances;

—for further assurance.

nants by purchaser to pay rent, and observe covenants, and indemnify vendor in respect thereof, supra, p. 124.] IN WITNESS &c.

THE SCHEDULE to which the above-written INDENTURE refers.

XV.

CONVEYANCE *of* FREEHOLDS *and* LEASEHOLDS, *and* COVENANT *to surrender* COPYHOLDS *to a* PURCHASER.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], a widower (*a*), of the one part, and C. D., of &c. [*purchaser*], a bachelor (*b*), of the other part. WHEREAS [*recital of the lease and of its being vested in the vendor, supra, p.* 121].

Recital of contract for sale;

AND WHEREAS the said A. B. has contracted with the said C. D. for the sale to him, at the price of £——, of the freehold hereditaments intended to be hereby granted, and the inheritance thereof in fee-simple in possession, free from incumbrances, and of the copyhold hereditaments hereinafter covenanted to be surrendered, and the inheritance thereof in possession, according to the custom of the manor of which the same are holden, free from incumbrances, except the accustomed rents, fines,

(*a*) See supra, p. 107, n. (*a*). (*b*) See supra, p. 96, n. (*a*).

heriots, suits, and services, and of the said leasehold premises for the residue of the aforesaid terms, and subject to the rent, covenants, and conditions aforesaid, but free from all other incumbrances. AND WHEREAS, for the purposes of the act imposing an ad-valorem stamp duty on conveyances on sales, £—— has been apportioned as the price of the said freehold and leasehold hereditaments, and £—— as the price of the said copyhold hereditaments (*a*). NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said contract, and in consideration of the sum of £—— [*the whole purchase-money*] to the said A. B. this day paid by the said C. D., (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, [*freehold parcels, and general words, supra, p.* 125], TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said contract, and for the consideration aforesaid, he the said A. B. doth hereby, for himself, his heirs, executors, and

—of apportionment of purchase-money for the Stamp Act.

Witnesseth.

Consideration.

Receipt.

Conveyance of freehold.

Habendum.

Witnesseth.

Covenant to surrender copyholds

(*a*) It will be seen, that in this Precedent the apportionment for the purposes of the stamp duty is managed differently from the apportionment in Precedent XIII., supra, p. 127. If the purchase-money is to be paid to more than one hand, as to a mortgagor and his mortgagee, or by more than one hand, as by a purchaser and his mortgagee, it is inconvenient to do more than state the apportionment in a recital; nor is more required.

administrators, COVENANT with the said C. D. and his heirs, that he the said A. B. and his heirs, and all other necessary parties, (if any), will, at or before the next court held for the manor of ——, in the county of ——, well and effectually surrender into the hands of the lord of the same manor, according to the custom thereof, [*parcels – general words, supra, p.* 126], TO THE USE of the said C. D., his heirs and assigns, according to the custom of the said manor, and by and under the accustomed rents, fines, heriots, suits, and services.

to the use of purchaser.

Witnesseth. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said contract, and for the consideration aforesaid, he the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the said ——, hereditaments, and premises by the said indenture of the —— day of —— [*the lease*] expressed to be demised (*a*), with their rights, easements, and appurtenances, AND ALL the estate and interest of the said A. B. in the said premises and every part thereof, TO HOLD the said premises unto the said C. D., his executors, administrators, and assigns, for the residue of the said term of —— years, at the rent and subject to the covenants and conditions in the said lease reserved and contained, and henceforth by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed. AND THE SAID A. B. doth hereby, for himself, his heirs,

Assignment of leaseholds.

Habendum.

(*a*) See supra, p. 122, n. (*b*).

executors, and administrators, COVENANT with the said C. D., his heirs, executors, administrators, and assigns, respectively, that all and singular the rents, covenants, and conditions, in the said lease reserved and contained, and by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed, have been paid, observed, and performed up to the date of these presents; AND THAT, notwithstanding anything by the said A. B. or any of his ancestors done, or knowingly suffered, he the said A. B. now hath power to grant the said premises hereinbefore expressed to be hereby granted, and to surrender the said premises hereinbefore covenanted to be surrendered, to the use of the said C. D., his heirs and assigns, in manner aforesaid, free from incumbrances, and to assign the said premises hereinbefore expressed to be assigned unto the said C. D., his executors, administrators, and assigns, for the term, and subject as and in manner aforesaid, free from incumbrances; AND THAT he the said A. B., his heirs, executors, and administrators, and all other persons lawfully or equitably claiming through or in trust for him or any of his ancestors, will, at all times, at the cost of the said C. D., his heirs, executors, administrators, or assigns, do and execute all such acts and assurances for further or better assuring all or any of the said premises hereinbefore expressed to be hereby granted, and hereinbefore covenanted to be surrendered respectively to the use of the said C. D., his heirs and assigns, and all or any of the said premises hereinbefore

Covenants by vendor, that rents and covenants have been paid and performed;

—for right to convey free from incumbrances;

—for further assurance.

expressed to be assigned unto the said C. D., his executors, administrators, and assigns, for the then residue of the said term of —— years, subject as and in manner aforesaid, as by the said C. D., his heirs, executors, administrators, and assigns, respectively, shall be reasonably required. [*Covenants by purchaser to pay rent, and observe covenants, and indemnify vendor in respect thereof, supra, p.* 124.] IN WITNESS &c.

THE SCHEDULE to which the above-written INDENTURE refers.

Part I. Part II.

Mortgages.

XVI.

MORTGAGE *in* FEE, *with* POWER *of* SALE *to* ONE MORTGAGEE.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part, and C. D., of &c. [*mortgagee*], of the other part,

Witnesseth. Considera-tion. WITNESSETH, that, in consideration of the sum of £—— this day paid to the said A. B. by the said C. D., (the receipt whereof the said A. B.

Covenant for doth hereby acknowledge), he the said A. B. doth

hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his executors and administrators, that he the said A. B., his heirs, executors, or administrators, will pay unto the said C. D., his executors, administrators, or assigns, the sum of £—— [*the principal sum*], with interest for the same in the meantime at the rate of £—— per cent. per annum, on the —— day of —— next (*a*), without any deduction or abatement whatsoever. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, [*parcels—general words, supra, p.* 96], TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns. PROVIDED ALWAYS, that, if the said A. B., his heirs, executors, administrators, or assigns, shall pay unto the said C. D., his executors, administrators, or assigns, the said sum of £—— [*the principal sum*], together with interest for the same in the meantime at the rate of £—— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever, then the said C. D., his heirs or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B., his heirs, executors, administrators, or assigns, reconvey the said premises unto the said A. B., his heirs and assigns, or as he or they shall direct,

re-payment of mortgage-money, with interest, at the end of six months.

Witnesseth.

Conveyance.

Habendum.

Proviso for redemption.

(*a*) Six calendar months from the date of the mortgage.

free from incumbrances by the said C. D., his heirs, executors, administrators, or assigns. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his executors and administrators, that, if the said sum of £—— [*the principal*], or any part thereof, shall remain unpaid after the said —— day of —— next, he the said A. B., his heirs, executors, administrators, or assigns, will, so long as the same sum, or any part thereof, shall remain unpaid, pay to the said C. D., his executors, administrators, or assigns, interest for the said sum of £——, or for so much thereof as shall for the time being remain unpaid, at the rate of £—— per cent. per annum, by equal half-yearly payments, on the —— day of —— and the —— day of ——, without any deduction or abatement whatsoever. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that he the said A. B. now hath power to grant the said premises unto and to the use of the said C. D., his heirs and assigns, in manner aforesaid, free from incumbrances; AND THAT he the said A. B., and his heirs, and all other persons lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said C. D., his heirs, executors, administrators, or assigns, but at the cost of the said A. B., his heirs, executors, or administrators, do and execute all such acts and assurances for further or better assuring all or any of the said pre-

Covenant for payement of interest;

—for right to convey, free from incumbrances;

and for further assurance.

mises to the use of the said C. D., his heirs and assigns, in manner aforesaid, as by him or them shall be reasonably required; PROVIDED NEVERTHELESS, that it shall be lawful for the said A. B., his heirs and assigns, to hold all the said premises until default shall be made in payment of the said sum of £—— or the interest thereon, or some part thereof respectively, contrary to the aforesaid proviso for payment of the same, without any interruption by the said C. D., or any person lawfully or equitably claiming through him (*a*). AND IT IS HEREBY DECLARED, that, if default shall be made in payment of the said sum of £—— or the interest thereon, or any part thereof respectively, on the —— day of —— next, it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times thereafter, without any further consent on the part of the said A. B., his heirs or assigns, to sell the said premises, or any part thereof, either together or in parcels, and either by public auction or private contract, with full power to buy in or rescind any contract for sale, and to re-sell without being responsible for any loss which may be occasioned thereby; AND TO DO and execute all such acts and assurances for effectuating any such sale as the said C. D., his executors, administrators, or assigns, shall think fit; AND THAT, upon a sale by any person or persons who may not be seised

Proviso for quiet enjoyment by mortgagor till default.

Power of sale.

On sale made by personal representa-

(*a*) The proviso for quiet enjoyment until default is of very little practical use, and may be omitted.

tives, persons having legal estate to join.

of the legal estate, the person in whom the legal estate shall be vested shall do and execute such acts and assurances for carrying the sale into effect as the person or persons by whom the sale shall be made shall direct: PROVIDED NEVERTHELESS, that the said C. D., his executors, administrators, or assigns, shall not execute the power of sale hereinbefore contained until he or they shall have given to the said A. B., his heirs, executors, administrators, or assigns, or left on the said premises, a notice in writing to pay off the monies for the time being owing on the security of these presents, and default shall have been made in such payment for six calendar months after giving or leaving such notice, or until some half-yearly payment of interest, or a part of some such half-yearly payment, shall have become in arrear for three calendar months (*a*): PROVIDED ALSO, that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause lastly hereinbefore contained has happened, nor whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; and notwithstanding any impropriety or irregularity

Power not to be exercised till certain events shall happen.

Purchasers not to be bound to see that such events have happened.

(*a*) This proviso is, in most cases, of little practical value, and may be omitted; for a mortgagee is not disposed to sell the property, if he can get his money by demanding it. If this clause be left out, the words in the next clause referring to it should be omitted.

whatsoever in any such sale, the same shall, as regards the purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly. AND IT IS HEREBY DECLARED, that the receipt of the said C. D., his executors, administrators, or assigns, for the purchase-monies of the premises sold, or any part thereof, shall effectually discharge the purchaser or purchasers therefrom and from being concerned to see to the application thereof, or being accountable for the non-application or mis-application thereof. AND IT IS HEREBY DECLARED, that the said C. D., his executors, administrators, and assigns, shall hold the monies to arise from any sale in pursuance of the aforesaid power, UPON TRUST, in the first place, thereout to pay all the expenses incurred on such sale, or otherwise in relation to the premises; And, in the next place, to apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents; And then to pay the surplus (if any) of the monies arising from such sale to the said A. B., his heirs or assigns: PROVIDED ALWAYS, that the said C. D., his executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them (*a*). IN WITNESS &c.

Mortgagee's receipt to be a discharge to purchasers.

Trusts of purchase-money.

Mortgagee's indemnity clause.

THE SCHEDULE to which the above-written INDENTURE refers.

(*a*) It is usual to provide, that the right of foreclosure shall not be affected by the power of sale; but the precau-

XVII.

Mortgage *in* Fee, *with* Power *of* Sale *to* several Mortgagees.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part; and C. D., of &c., E. F., of &c., and G. H., of &c., Witnesseth. [*mortgagees*], of the other part, WITNESSETH, Consideration. that, in consideration of the sum of £—— this day paid to the said A. B. by the said C. D., E. F., Receipt. and G. H., (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, Covenant for re-payment of mortgage-money, with interest, at COVENANT with the said C. D., E. F., and G. H., their executors and administrators, that he the said A. B., his heirs, executors, or admini-

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tion can hardly be deemed necessary, for there is no ground to suppose that the mortgagee, under a properly drawn mortgage, loses any of his rights as a mortgagee by arming himself, in addition, with a power of sale. In the case of bankruptcy, for instance, it has been expressly decided that a mortgagee may waive his power of sale, and have the estate sold under an order in bankruptcy in the usual way. (*Ex parte Hodgson*, 1 Glyn. & Jam. 12; *Ex parte Davis*, 1 Mont. & Ayr. 89; S. C., 3 Dea. & Chit. 504). The notion of the power of sale affecting the right of foreclosure probably arose from the circumstance, that there is no right to foreclose under a security made by a trust for sale, because there is, in that case, no proper mortgage at all.

strators, will pay unto the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, [redacted] or his assigns, the sum of £—— [*the principal sum*], with interest for the same in the meantime at the rate of £—— per cent. per annum, on the —— day of —— next (*a*), without any deduction or abatement whatsoever. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B. doth hereby grant unto the said C. D., E. F., and G. H., their heirs, and assigns, [*parcels—general words, supra, p.* 96], TO HOLD the said premises UNTO the said C. D., E. F., and G. H., their heirs and assigns, TO THE USE of the said C. D., E. F., and G. H., their heirs and assigns: PROVIDED ALWAYS, that if the said A. B., his heirs, executors, administrators, or assigns, shall pay unto the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, the sum of £—— [*the principal sum*], together with interest for the same in the meantime at the rate of £— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever, then they the said C. D., E. F., and G. H., or the survivors or survivor of them, or the heirs of such survivor, their or his assigns, will, at any time

the end of six months.

Witnesseth secondly. Conveyance.

Habendum.

Proviso for redemption.

(*a*) Six calendar months from the date of the mortgage.

thereafter, upon the request and at the cost of the said A. B., his heirs, executors, administrators, or assigns, re-convey the said premises unto the said A. B., his heirs and assigns, or as he or they shall direct, free from incumbrances by the said C. D., E. F., and G. H., or any of them, their or any of their heirs, executors, administrators, or assigns.

Covenant for payment of interest.

AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., E. F., and G. H., their executors, administrators, and assigns, that, if the said sum of £——[*the principal sum*], or any part thereof, shall not be paid on the said —— day of —— next, he the said A. B., his heirs, executors, administrators, or assigns, will so long as the same sum, or any part thereof shall remain unpaid, pay to the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, interest for the said sum of £——, or for so much thereof as shall for the time being remain unpaid, at the rate of £— per cent. per annum, by equal half-yearly payments, on the —— day of —— and the —— day of ——, without any deduction or abatement whatsoever.

Declaration that the money belongs to mortgagees on a joint account.

AND IT IS HEREBY DECLARED, that the said sum of £——, advanced by the said C. D., E. F., and G. H., belongs to them on a joint account, and, accordingly, that the receipt of the survivors or survivor of them, or of the executors or administrators of such survivor, shall be an effectual discharge for the principal monies and

interest intended to be hereby secured. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., E. F., and G. H., their heirs and assigns, that he the said A. B. now hath power to grant the said premises to the use of the said C. D., E. F., and G. H., their heirs and assigns, in manner aforesaid, free from all incumbrances whatsoever. AND THAT HE, the said A. B., and his heirs, and all other persons lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said C. D., E. F., and G. H., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, their or his assigns, but at the cost of the said A. B., his heirs, executors, or administrators, do and execute all such acts and assurances for further or better assuring all or any of the said premises to the use of the said C. D., E. F., and G. H., their heirs and assigns, in manner aforesaid, as by the said A. B., C. D., and E. F., or the survivors or survivor of them, or the heirs, executors, or administrators of such survivor, their or his assigns, shall be reasonably required: PROVIDED NEVERTHELESS, that it shall be lawful for the said A. B., his heirs and assigns, to hold all the said premises until default shall be made in payment of the aforesaid sum of £——, and the interest thereon, as aforesaid, or of some part thereof respectively, contrary to the aforesaid proviso for payment of the same without any in-

Covenants for right to convey;

and for further assurance.

Proviso for quiet enjoyment by mortgagor till default.

terruption by the said C. D., E. F., and G. H., or any of them, or any person lawfully or equitably claiming through them or any of them (*a*). AND IT IS HEREBY DECLARED, that, if default shall be made in payment of the said sum of £——, or the interest thereon or any part thereof respectively on the said —— day of —— next, it shall be lawful for the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, at any time or times hereafter, without any further consent on the part of the said A. B., his heirs or assigns, to sell the said premises, or any part thereof, either together or in parcels, and either by public auction or private contract, with full power to buy in or rescind any contract for sale, and to re-sell without being responsible for any loss which may be occasioned thereby; AND to do and execute all such acts and assurances for effectuating any such sale as the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, shall think fit; AND THAT upon a sale by any person or persons who may not be seised of the legal estate, the person in whom the legal eatate shall be vested shall do and execute such acts and assurances for carrying the sale into effect as the person or persons by whom the sale shall be made shall direct: PROVIDED NEVER-

Power of sale.

On sale made by personal representatives, persons having the legal estate to join.

(*a*) See supra, p. 139, n. (*a*)

THELESS, that the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such survivor, their or his assigns, shall not execute the power of sale hereinbefore contained until they or he shall have given to the said A. B., his heirs, executors, administrators, or assigns, or left on the said premises, a notice in writing to pay off the monies for the time being owing on the security of these presents, and default shall have been made in such payment for six calendar months after giving or leaving such notice, or until some half-yearly payment of interest or a part of some such half-yearly payment, shall have become in arrear for three calendar months (*a*): PROVIDED ALSO, that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause lastly hereinbefore contained, has happened, nor whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; and notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards the purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly. AND IT IS HEREBY DECLARED that the receipts of the said C. D., E. F., and G. H., or the survivors or survivor of them, or the executors or administrators of such

Power not to be exercised till certain events shall happen.

Purchasers not to be bound to see that such events have happened.

Mortgagees' receipts to be discharges to purchasers.

(*a*) See supra, p. 140, n. (*a*).

survivor, their or his assigns, for the purchase-monies of the premises sold or any part thereof, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof, or being accountable for the mis-application or non-application thereof. AND IT IS HEREBY DECLARED, that the said C. D., E. F., and G. H., and the survivors and survivor of them, and the executors or administrators of such survivor, their or his assigns, shall hold the monies to arise from any sale in pursuance of the aforesaid power, UPON TRUST, in the first place, thereout to pay all the expenses incurred on such sale, or otherwise in relation to the premises; And, in the next place, to apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents, and then to pay the surplus (if any) of the monies to arise from such sale unto the said A. B., his heirs or assigns: PROVIDED ALWAYS, that the said C. D., E. F., and G. H., or any of them, their or any of their executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them. IN WITNESS &c.

Trusts of purchase-money.

Mortgagees' indemnity clause.

THE SCHEDULE to which the above-written INDENTURE refers.

XVIII.

Mortgage *of* Copyholds.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part, and C. D., of &c. [*mortgagee*], of the other part, WITNESSETH, that, in consideration of the sum of £—— this day paid to the said A. B. by the said C. D., (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, and administrators, [*covenant for re-payment of mortgage-money with interest, supra, p.* 136]. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, [*covenant to surrender copyholds, supra, p.* 116], TO THE USE of the said C. D., his heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, heriots, suits, and services, and SUBJECT to a condition for making void the said surrender, if the said A. B., his heirs, executors, administrators, or assigns, shall pay unto the said C. D., his executors, administrators, or assigns, the said

Parties.
Witnesseth.
Consideration.
Receipt.
Witnesseth secondly.
Covenant to surrender copyholds
to the use of the mortgagee;
subject to a condition for making void the surrender.

sum of £—— [*the principal sum*], with interest for the same in the meantime at the rate of £— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever. [*Covenants for payment of interest and for title, proviso for quiet enjoyment till default, and power of sale, as in mortgage of freeholds, supra, pp.* 138—141.]

THE SCHEDULE to which the above-written INDENTURE refers.

XIX.

MORTGAGE *of* LEASEHOLDS *by* DEMISE (*a*), *with a* COVENANT *to* INSURE.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*mortgagor*], of the one part, and C. D., Recital of lease; of &c. [*mortgagee*], of the other part. WHEREAS &c., [*recite the lease, and its having become vested in the mortgagor, ut supra, p.* 121]. —of agreement for mortgage. AND WHEREAS the said C. D. has agreed to lend the said A. B. the sum of £——, upon having the repayment thereof, with interest at the rate of £— per cent. per annum, secured in manner hereinafter Witnesseth. appearing. NOW THIS INDENTURE WITNESSETH,

(*a*) A mortgage of leaseholds is usually made by demise, to avoid subjecting the mortgagee to the rent and covenants, —at least where they are onerous.

that, in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. this day paid by the said C. D., &c [*receipt and covenant for payment of mortgage-money with interest, supra, p.* 136]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B. doth hereby demise unto the said C. D., his executors, administrators, and assigns, ALL THAT the said —— hereditaments and premises by the said indenture of the —— day of —— expressed to be demised (*a*), WITH their rights, easements, and appurtenances, TO HOLD the said premises unto the said C. D., his executors, administrators, and assigns, for the residue of the said term of —— years, except the last —— days thereof: PROVIDED ALWAYS, that, if the said A. B., his heirs, executors, administrators, or assigns, shall pay to the said C. D., his executors, administrators, or assigns, the said sum of £—— [*the principal sum*], with interest for the same in the meantime at the rate of £— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever, then the said C. D., his executors, administrators, or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B., his executors, administrators, or assigns, surrender the said premises unto the said A. B., his executors, administrators, or assigns, free from incumbrances by the said C. D., his exe-

Covenant for payment of mortgage-money, with interest.

Witnesseth.

Demise.

Parcels.

Habendum.

Proviso for redemption.

(*a*) Vide supra, p. 122, n. (*b*).

cutors, administrators, or assigns, [*covenant for payment of interest, supra, p.* 138.] AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that the rents, covenants, and conditions in the hereinbefore-recited lease reserved and contained, and by the lessee, his executors, administrators, or assigns, to be paid, observed, or performed, have been paid, observed, and performed up to the date of these presents; AND THAT he the said A. B. now hath power to demise the said premises unto the said C. D., his executors, administrators, and assigns, for the term and in manner aforesaid, free from incumbrances; AND THAT he the said A. B., his executors, and administrators, and all other persons lawfully or equitably claiming any estate or interest in the premises, will at all times, at the request of the said C. D., his executors, administrators, or assigns, but at the cost of the said A. B., his executors, or administrators, do and execute all such acts and assurances for further or better demising the said premises unto the said C. D., his executors, administrators, and assigns, for the residue then to come of the said term hereby expressed to be granted, as by him or them shall be reasonably required; AND THAT he the said A. B., his executors, administrators, or assigns, will, so long as any principal money or interest shall remain on these presents, pay, observe, and perform the rents, covenants, and agreements in the hereinbefore-recited lease reserved and contained, and

Covenants by mortgagor, that rents and covenants have been paid and performed;

—for right to demise;

—for further assurance;

and that, during the security, the rents and covenants shall be paid and performed,

by the lessee, his executors, administrators, and assigns, to be paid observed, or performed, and will at all times keep the said C. D., his executors, administrators, and assigns, indemnified against all actions, suits, expenses, and claims, on account of the non-payment of the said rents, or any of them, or any part thereof, respectively, or the breach or non-observance or non-performance of the said covenants and conditions, or any of them: PROVIDED NEVERTHELESS, that it shall be lawful for the said A. B., his executors, administrators, and assigns, to hold all the said premises until default shall be made in payment of the said sum of £——, or the interest thereon as aforesaid, or some part thereof respectively, contrary to the aforesaid proviso for payment of the same, without any interruption by the said C. D., or any person lawfully or equitably claiming through him (*a*). AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B., his executors, administrators, or assigns, will, so long as any money shall remain on this present security, keep all the said messuages and buildings insured against loss or damage by fire in the sum of £—— at the least, and will pay all premiums and sums of money necessary for such purpose on the first day on which the same respectively ought

and the mortgagee indemnified.

Proviso for quiet enjoyment by mortgagor till default.

Covenant to keep the premises insured against fire;

(*a*) See supra, p. 139, n. (*a*).

to be paid, and will, on demand, produce to the said C. D., his executors, administrators, and assigns, the policy or policies of such insurance, and the receipt for every such payment; AND ALSO, that, if default shall be made in keeping the said premises so insured, it shall be lawful for the said C. D., his executors, administrators, and assigns, out of his or their own monies, to insure, and keep insured, the said premises in the sum of £——, and that the said A. B., his executors, administrators, or assigns, will repay to the said C. D., his executors, administrators, or assigns, all sums of money expended for that purpose by him or them, with interest thereon at the rate aforesaid, from the time of the same respectively having been advanced or paid, and that, until such repayment, the same shall be a charge upon the said premises hereinbefore expressed to be hereby demised. AND IT IS HEREBY DECLARED, that, if default shall be made in payment of the said sum of £——, or the interest thereon, or any part thereof respectively, on the said —— day of —— next, it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times thereafter, without any further consent on the part of the said A. B., his executors, administrators, or assigns, to sell the said premises or any part thereof, either together or in parcels, and either by public auction or private contract, with full power to buy in or rescind any contract for sale, and to resell without being responsible

—that on default by mortgagor, mortgagee may insure.

Power of sale.

for any loss which may be occasioned thereby; AND to do and execute all such acts and assurances for effectuating any such sale as the said C. D., his executors, administrators, or assigns, shall think fit; AND THAT, after any such sale, the said A. B., his executors, administrators, and assigns, shall stand possessed of the said last —— days left in the said A. B. of the said term of —— years in the premises sold upon trust for the purchaser or purchasers thereof: PROVIDED ALSO, and it is hereby declared, that the said C. D., his executors, administrators, or assigns, shall not execute the power of sale hereinbefore contained until he or they shall have previously given or left on the said premises a notice in writing to the said A. B., his executors or administrators, to pay off the monies for the time being owing on the security of these presents, and default shall have been made in such payment for six calendar months after giving or leaving such notice, or until some half-yearly payment of interest, or a part of some such half-yearly payment, shall have become in arrear for three calendar months (*a*): PROVIDED ALSO, that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause lastly hereinbefore contained has happened, nor whether any money remains upon the

After a sale, mortgagor to hold the reversion in trust for purchaser.

Power not to be exercised till certain events shall happen.

Purchasers not to be bound to see that such events have happened.

(*a*) See supra, p. 140, n, (*a*).

security of these presents, nor as to the propriety or regularity of such sale; and notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards the purchaser or purchasers, be deemed to be within the aforesaid power, and be valid accordingly. AND IT IS HEREBY DECLARED, that the receipts of the said C. D., his executors, administrators, or assigns, for the purchase-monies of the premises sold, or any part thereof, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or mis-application thereof. AND IT IS HEREBY DECLARED, that the said C. D., his executors, administrators, and assigns, shall hold the monies to arise from any sale, in pursuance of the aforesaid power, UPON TRUST, in the first place, thereout to pay all the expenses incurred on such sale, or otherwise in relation to the premises; And, in the next place, to apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents; And then to pay the surplus (if any) of the monies to arise from such sale to the said A. B., his executors, administrators, or assigns: PROVIDED ALWAYS, that the said C. D., his executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them. IN WITNESS &c.

Mortgagee's receipts to be discharges to purchasers.

Trusts of the purchase-money.

Mortgagee's indemnity clause.

XX.

MORTGAGE *of* FREEHOLDS *and* COPYHOLDS.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part, and C. D., of &c. [*mortgagee*], of the other part, WITNESSETH, that, in consideration of the sum of £—— this day paid to the said A. B. by the said C. D., &c., [*receipt and covenant for re-payment of mortgage-money with interest, supra, p.* 136]. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, [*freehold parcels, general words, supra, p.* 125.] TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns: PROVIDED ALWAYS, that, if the said A. B., his heirs, executors, administrators, or assigns, shall pay unto the said C. D., his executors, administrators, or assigns, the said sum of £—— [*the principal sum*], together with interest for the same in the meantime at the rate of £—— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever, then the said C. D., his heirs or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B.,

Parties.
Witnesseth.
Covenant to pay principal and interest.
Witnesseth.
Conveyance of freeholds.
Habendum.
Proviso for redemption.

his heirs, executors, administrators, or assigns, reconvey the said premises unto the said A. B., his heirs or assigns, or as he or they shall direct, free from incumbrances by the said C. D., his heirs, executors, administrators, or assigns. AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B. doth hereby for himself, his heirs, executors, and administrator, covenant with the said C. D. his executors and administrators, that he the said A. B., or his heirs, and all other necessary parties, (if any), will, at or before the next court for the manor of ——, in the county of ——, well and effectually surrender into the hands of the lord of the same manor, according to the custom thereof [*parcels, general words, supra, p.* 126], TO THE USE of the said C. D., his heirs and assigns, according to the custom of the said manor, by and under the accustomed rents, fines, heriots, suits, and services, and SUBJECT to a condition for making void the said surrender, corresponding with the proviso for redemption hereinbefore contained [*covenant for payment of interest, supra, p.* 138]. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs and assigns, that the said A. B. now hath power to grant the said premises hereinbefore expressed to be hereby granted, and to surrender the said premises hereinbefore covenanted to be surrendered to the use of the said C. D., his heirs and assigns, in manner aforesaid, free from incum-

Witnesseth.

Covenant to surrender copyholds,

to the use of the mortgagee;

subject to a condition for making void the surrender.

Covenants for right to convey free from incumbrances;

brances. AND THAT he the said A. B., and his heirs, and all other persons lawfully or equitably claiming any estate or interest in the premises, will at all times, at the request of the said C. D., his heirs, executors, administrators, or assigns, but at the cost of the said A. B., his heirs, executors, or administrators, do and execute all such acts and assurances for further or better assuring all or any of the said premises to the use of the said C. D., his heirs and assigns, in manner aforesaid, as by him or them shall be reasonably required: PROVIDED NEVERTHELESS, that it shall be lawful for the said A. B., his heirs and assigns, to hold all the said premises until default shall be made in payment of the said sum of £——, or the interest thereon, or some part thereof respectively, contrary to the aforesaid proviso for payment of the same, without any interruption by the said C. D., or any person lawfully or equitably claiming through him (*a*). [*Power of sale as in mortgage of freeholds, supra, pp.* 139—141.]

—for further assurance.

Proviso for quiet enjoyment till default.

THE SCHEDULE to which the above-written INDENTURE refers.

Part I.—Part II.

(*a*) See supra, p. 139, n. (*a*).

XXI.

MORTGAGE *of* FREEHOLDS *and* LEASEHOLDS.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part, and C. D., of &c. [*mortgagee*], of the other part. WHEREAS &c. [*recite the lease, and its being vested in the mortgagor, ut supra, p.* 121]. Recital of agreement for mortgage. AND WHEREAS the said C. D. has agreed to lend the said A. B. the sum of £——, upon having the re-payment thereof, with interest at the rate of £—— per cent. per annum, secured in manner hereinafter appearing. Witnesseth. NOW THIS INDENTURE WITNESSETH, Covenant to pay principal and interest. that, in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. this day paid by the said C. D. &c. [*receipt and covenant for re-payment of mortgage-money, with interest, supra, p.* 136]. Witnesseth. AND THIS INDENTURE ALSO WITNESSETH, Conveyance of freeholds. that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns [*freehold parcels, general words, supra, p.* 96, *with the addition of the reference to a distinguishing colour on the plan, supra, p.* 125], Habendum. TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D.,

his heirs and assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B. doth hereby demise unto the said C. D., his executors, administrators, and assigns, ALL THOSE —— hereditaments and premises by the said indenture of the —— day of —— expressed to be demised, and which are distinguished in the said plan in the margin of these presents, and therein coloured —— (*a*), WITH the rights, easements, and appurtenances, TO HOLD the said premises UNTO the said C. D., his executors, administrators, and assigns, for the residue of the said term of —— years, except the last —— days thereof: PROVIDED ALWAYS, that, if the said A. B., his heirs, executors, administrators, or assigns, shall pay unto the said C. D., his executors, administrators, or assigns, the said sum of £—— [*the principal sum*], with interest for the same in the meantime at the rate of £—— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever; then the said C. D., his heirs, executors, administrators, or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B., his heirs, executors, administrators, or assigns, re-convey the premises hereinbefore expressed to be granted to the use of the said A. B., his heirs and assigns, or as he or they

Witnesseth.

Demise of leaseholds.

Habendum.

Proviso for redemption.

(*a*) See supra, p. 122, n. (*b*).

shall direct, and surrender the said premises, hereinbefore expressed to be demised, unto the said A. B., his executors, administrators, or assigns, free from incumbrances by the said C. D., his heirs, executors, administrators, or assigns [*covenant for payment of interest, supra, p.* 138]. AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, COVENANT with the said C. D., his heirs, executors, administrators, and assigns, respectively, that the rents, covenants, and conditions, in the hereinbefore-recited lease reserved and contained, and by the lessee, his executors, administrators, or assigns, to be paid, observed, or performed, have been paid, observed, and performed, up to the date of these presents; AND THAT he the said A. B. now hath full power to grant the said premises hereinbefore expressed to be granted to the use of the said C. D., his heirs and assigns, and to demise the said premises hereinbefore expressed to be demised unto the said C. D., his executors, administrators, and assigns, for the term and in manner aforesaid free from incumbrances. AND THAT he the said A. B., his heirs, executors, and administrators, and all other persons lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said C. D., his heirs, executors, administrators, or assigns, respectively do and execute all such acts and assurances for further or better assuring all or any of the said premises hereinbefore expressed to be

Covenants by mortgagor, that rents and covenants have been paid and performed;

—for right to convey free from incumbrances;

—for further assurances;

hereby granted to the use of the said C. D., his heirs and assigns, and all or any of the said premises hereinbefore expressed to be demised unto the said C. D., his executors, administrators, and assigns, for the then residue of the said term hereby expressed to be granted, as by the said C. D., his heirs, executors, administrators, or assigns, shall be reasonably required. AND THAT he the said A. B., his executors, administrators, or assigns, will, so long as any principal money or interest shall remain on these presents, pay, observe, and perform all the rents, covenants, and conditions, in the said lease reserved and contained, and by the lessee, his executors, administrators, and assigns, to be paid, observed, and performed, and will at all times keep the said C. D., his executors, administrators, and assigns, indemnified against all actions, suits, expenses, and claims, on account of the non-payment of the said rents or any of them, or any part thereof respectively, or the breach or non-observance or non-performance of the said covenants and conditions, or any of them: PROVIDED NEVERTHELESS, that it shall be lawful for the said A. B., his heirs, executors, administrators, and assigns, respectively, to hold all the said premises until default shall be made in payment of the said sum of £——, or the interest thereon as aforesaid, or some part thereof, respectively, contrary to the aforesaid proviso for payment of the same without any interruption by the said C. D., or any person lawfully or equitably claiming through

and that, during the security, the rents and covenants shall be paid and performed,

and the mortgagee indemnified.

Proviso for quiet enjoyment till default.

Power of sale.

him (*a*). AND IT IS HEREBY DECLARED, that, if default shall be made in payment of the said sum of ——, or the interest thereon, or any part thereof, respectively, on the said —— day of —— next, it shall be lawful for the said C. D., his executors, administrators, or assigns, without any further consent on the part of the said A. B., his heirs, executors, administrators, or assigns, to sell the said premises, either together or in parcels, and either by public auction or private contract, with full power to buy in, or to rescind any contract for sale, and to resell, without being responsible for any loss which may be occasioned thereby; AND to do and execute all such acts, deeds, and assurances for effectuating any such sale as the said C. D., his executors, administrators, or assigns, shall think fit; AND THAT, upon a sale of all or any of the said premises hereinbefore expressed to be hereby granted by any person or persons who may not be seised of the legal estate, the person in whom the legal estate shall be vested shall do and execute all such acts and assurances for carrying the sale into effect as the person or persons by whom the sale shall be made shall direct; AND THAT, after a sale of all or any of the said premises hereinbefore expressed to be demised, the said A. B., his executors, administrators, and assigns, shall stand possessed of the last —— days left in the said A. B. of the

On sale by personal representatives, persons having the legal estate to join;

—after a sale, mortgagor to hold the reversion in trust for purchaser.

(*a*) See supra, p. 139, n. (*a*).

said term of —— years in the premises sold, upon trust for the purchaser or purchasers thereof: PROVIDED ALSO, and it is hereby declared, that the said C. D., his executors, administrators, or assigns, shall not execute the power of sale hereinbefore contained until he or they shall have previously given or left on some of the said premises a notice in writing to the said A. B., his heirs, executors, or administrators, to pay off the monies for the time being owing on the security of these presents, and default shall have been made in such payment for six calendar months after giving or leaving such notice, or until some half-yearly payment of interest, or a part of some such half-yearly payment, shall have become in arrear for three calendar months (*a*): PROVIDED ALSO, that, upon any sale purporting to be made in pursuance of the aforesaid power, no purchaser shall be bound to inquire whether either of the cases mentioned in the clause lastly hereinbefore contained has happened, nor whether any money remains upon the security of these presents, nor as to the propriety or regularity of such sale; and notwithstanding any impropriety or irregularity whatsoever in any such sale, the same shall, as regards a purchaser, be deemed to be within the aforesaid power and be valid accordingly. AND IT IS HEREBY DECLARED, that the receipt of the said C. D., his executors, administrators, or assigns,

Power not to be exercised till certain events shall happen.

Purchasers not to be bound to see that such events have happened.

Mortgagee's receipt to be a discharge to purchasers.

(*a*) See supra, p. 140, n. (*a*).

for the purchase-monies of the premises sold, or any part thereof, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or mis-application thereof. AND IT IS HEREBY DECLARED, that the said C. D., his executors, administrators, and assigns, shall hold the monies to arise from any sale in pursuance of the aforesaid power, UPON TRUST, in the first place, thereout to pay all the expenses incurred on such sale, or otherwise in relation to the premises; and, in the next place, to apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents; and then to pay the surplus (if any) of the monies to arise from such sale to the said A. B., his executors, administrators, or assigns, as personal estate, whether the same shall have arisen from the sale of the said freehold or leasehold premises: PROVIDED ALWAYS, that the said C. D., his executors, administrators, or assigns, shall not be answerable for any involuntary losses which may happen in the exercise of the aforesaid power and trusts, or any of them. IN WITNESS &c.

Trusts of the purchase-money.

Mortgagee's indemnity clause.

THE SCHEDULE to which the above-written INDENTURE refers.

XXII.

Mortgage *of* Freeholds, Copyholds, *and* Leaseholds.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part, and C. D., of &c., [*mortgagee*], of the other part. WHEREAS, &c. [*recite the lease, and its being vested in the mortgagor, ut supra, p.* 121]. AND WHEREAS the said C. D. has agreed to lend the said A. B. the sum of £——, upon having the repayment thereof, with interest at the rate of £—— per cent. per annum, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— to the said A. B. this day paid by the said C. D., &c. [*receipt and covenant for repayment of principal with interest, supra, p.* 136.] AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B. doth hereby grant unto the said C. D., his heirs and assigns [*freehold parcels, general words, supra, p.* 125]; TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns. AND

Parties.

Recital of lease;

—of agreement for mortgage.

Witnesseth.

Covenant to pay principal and interest.

Witnesseth.

Conveyance of freeholds.

Habendum.

Witnesseth. THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B., doth hereby demise unto the said C. D., his executors, administrators, and assigns, ALL THOSE —— hereditaments and premises by the said indenture of the —— day of —— expressed to be demised, and which are delineated in the said plan in the margin of these presents, and therein coloured —— (*a*); WITH the rights, easements, and appurtenances, TO HOLD the said premises UNTO the said C. D., his executors, administrators, and assigns, for the residue of the said term of —— years, except the last —— days thereof: PROVIDED ALWAYS, that, if the said A. B., his heirs, executors, administrators, or assigns, shall pay unto the said C D., his executors, administrators, or assigns, the said sum of £—— [*the principal sum*], with interest for the same in the meantime at the rate of £—— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever; then the said C. D., his heirs, executors, administrators, or assigns, will at any time thereafter, upon the request and at the cost of the said A. B., his heirs, executors, administrators, or assigns, re-convey the said premises hereinbefore expressed to be hereby granted to the use of the said A. B., his heirs, and assigns, or as he or they shall

Demise of leaseholds.

Habendum.

Proviso for redemption.

(*a*) See supra, p. 122, n. (*b*).

direct, and surrender the said premises hereinbefore expressed to be demised unto the said A. B., his executors, administrators, and assigns, free from incumbrances by the said C. D., his heirs, executors, administrators, or assigns. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he the said A. B., or his heirs, and all other necessary parties, (if any), will, at or before the next court for the manor of ——, in the county of ——, well and effectually surrender into the hands of the lord of the same manor, according to the custom thereof [*parcels, general words, supra, pp.* 126 *and* 96], TO THE USE of the said C. D., his heirs and assigns, according to the custom of the said manor by and under the accustomed rents, fines, heriots, suits, and services, and subject to a condition for making void the said surrender, corresponding with the proviso for redemption hereinbefore contained. [*Covenant for payment of interest, supra, p.*138]. AND THE SAID A. B. doth hereby for himself, his heirs, executors, and administrators, covenant with the said C. D., his heirs, executors, administrators, and assigns, respectively, that the rents, covenants, and conditions in the hereinbefore-recited lease reserved and contained and by the lessee, his executors, administrators, or assigns, to be paid, observed, or performed,

Witnesseth.

Covenant to surrender copyholds.

to the use of mortgagee;

subject to a condition for making void the surrender.

Covenants by mortgagor that rents and covenants have been paid and performed;

have been paid, observed, and performed, up to the date of these presents ; AND THAT he the said A. B. now hath full power to grant the said premises hereinbefore expressed to be hereby granted, and to surrender the said premises hereinbefore covenanted to be surrendered to the use of the said C. D., his heirs and assigns, free from incumbrances ; and to demise the said premises hereinbefore expressed to be demised unto the said C. D., his executors, administrators, and assigns, for the term and in manner aforesaid free from incumbrances ; AND THAT he the said A. B., his heirs, executors, and administrators, and all other persons lawfully or equitably claiming any estate or interest in the premises, will, at all times, at the request of the said C. D., his heirs, executors, administrators, or assigns, do and execute all such acts and assurances for further or better assuring all or any of the said premises hereinbefore expressed to be granted, and hereinbefore covenanted to be surrendered, respectively, to the use of the said C. D., his heirs and assigns, and all or any of the said premises hereinbefore expressed to be demised unto the said C. D., his executors, administrators, and assigns, for the then residue of the said term of years hereby expressed to be granted, as by the said C. D., his heirs, executors, administrators, or assigns, shall be reasonably required ; AND THAT he the said A. B., his heirs, executors, administrators, or assigns, will, so long as any principal monies or interest

—for right to convey;

—for further assurance;

and that, during the security, rents and covenants shall

shall remain on these presents, pay, observe, and perform, all the rents, covenants, and conditions, in the said lease reserved and contained, and by the lessee, his executors, administrators, and assigns, to be paid, observed, or performed; and will at all times keep the said C. D., his executors, administrators, and assigns, indemnified against all actions, suits, expenses, and claims, on account of the non-payment of the said rents, or any of them, or any part thereof, respectively, or the breach, or non-observance, or non-performance of the said covenants and conditions, or any of them: PROVIDED NEVERTHELESS, that it shall be lawful for the said A. B., his heirs, executors, administrators, and assigns, respectively, to hold all the said premises, until default shall be made in payment of the said sum of £——, or the interest thereon, as aforesaid, or some part thereof, respectively, contrary to the aforesaid proviso for payment of the same, without any interruption by the said C. D., or any person lawfully or equitably claiming through him (*a*) [*Power of sale, supra, pp.* 164—166].

be paid and performed.

Proviso for quiet enjoyment till default.

THE SCHEDULE to which the above-written INDENTURE refers.

Part I. Part II.

(*a*) See supra, p. 139, n. (*a*).

XXIII.

Mortgage *of a* Policy *of* Assurance *for securing a* Sum already due, *and* Future Advances.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part, and C. D., of &c. [*mortgagee*], of the other part. WHEREAS

Recital of mortgagor's being entitled to a policy of assurance; the said A. B. is entitled to a policy of assurance on his own life, granted by the —— Assurance Society, dated the —— day of ——, numbered ——, for the sum of £——, and under the annual premium of £——. AND WHEREAS the said A. B. is indebted to the said C. D. in the sum of £——, and may become further indebted to the said C. D. NOW THIS INDENTURE WITNESSETH, that, in consideration of the premises, he the said A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors and administrators, that he the said A. B., his executors or administrators, will pay unto the said C. D., his executors, administrators, or assigns, the sum of £—— [*the sum already owing*], together with interest for the same in the meantime, at the rate of £—— per cent. per annum, on the —— day of —— next, without any deduction or abatement

—of his being indebted to mortgagee.

Witnesseth.

Covenant to pay principal and interest.

whatsoever, and will also, upon demand, pay to him or them such other monies (if any) as may be advanced by him or them, to, or on account of, or may become due to him or them by the said A. B., his executors or administrators, with interest thereon, at the rate aforesaid, from the time or times of the same respectively being advanced or becoming due, without any deduction or abatement whatsoever. AND THIS INDENTURE ALSO WITNESSETH, that in consideration of the premises, the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the said policy of assurance hereinbefore described, and all monies assured or to become payable by virtue thereof, and the full benefit thereof, AND all the estate and interest of the said A. B. in the said premises and every part thereof, TO GETHER WITH power for the said C. D., his executors, administrators, and assigns, to sue and give receipts for the said monies, or any part thereof, in the name or names of the said A. B., his executors or administrators, TO HOLD the said premises unto the said C. D., his executors, administrators, and assigns: PROVIDED ALWAYS, that, if the said A. B., his executors, administrators, or assigns, shall pay to the said C. D., his executors, administrators, or assigns, the said sum of £—— [*the sum already owing*], with interest for the same in the meantime, at the rate of £— per cent. per annum, on the said —— day of —— next, without any deduction or abatement what-

Witnesseth.

Assignment of policy.

Power of attorney.

Habendum.

Proviso for redemption.

soever, and shall also, upon demand, pay to him or them such other monies as may be advanced by him or them, to, or on account of, or may become due to him or them by the said A. B., his executors or administrators, with interest thereon, at the rate aforesaid, from the time or times of the same respectively being advanced or becoming due, without any deduction or abatement whatsoever, then the said C. D., his executors, administrators, or assigns, will, at any time thereafter, upon the request and at the cost of the said A. B., his executors, administrators, or assigns, assign the said policy and premises to the said A. B., his executors, administrators, or assigns, or as he or they shall direct, free from incumbrances, by the said C. D., his executors, administrators, or assigns. AND IT IS HEREBY DECLARED, that if, before the said policy shall have been assigned as last aforesaid, any monies shall become payable under the same, then the said C. D., his executors, administrators, and assigns, shall receive and hold the same, UPON TRUST, in the first place, thereout to pay all the expenses incurred in recovering the same, or otherwise in relation to the premises; And, in the next place, to apply such monies in or towards satisfaction of the monies for the time being owing on the security of these presents; And then to pay the surplus (if any) of the said monies to become payable under the said policy to the said A. B., his executors, administrators, or assigns. AND IT IS HEREBY

Trusts of the policy.

DECLARED, that the receipt of the said C. D., his executors, administrators, or assigns, for any monies payable under the said policy shall effectually discharge the said Assurance Society, and all other persons from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said C. D., his executors, administrators, and assigns, that he the said A. B. will not do or suffer anything whereby the said policy may become void or voidable, or the said C. D., his executors, administrators, or assigns, be hindered from receiving all or any of the money assured or to become payable by virtue thereof; AND THAT, if the said policy shall become void, the said A. B. will immediately effect a new policy or policies on his life, in the name or names of the said C. D., his executors, administrators, or assigns, for a sum or sums not less in the whole than the sum of £——; and that every such new policy, and the monies to become payable under the same, shall be subject to the proviso for redemption hereinbefore contained, and the trusts hereby declared concerning the said existing policy of assurance, and the monies to become payable by virtue thereof (*a*); AND THAT the

Mortgagee's receipt to be a discharge to the assurance society.

Covenants by mortgagor not to vitiate policy;

—if vitiated, to effect new policy;

—to pay the premiums,

(*a*) The two preceding covenants may be dispensed with, if the mortgagee chooses to rely wholly on the existing policy. Otherwise it is desirable to have a specific engagement by the mortgagor to keep an assurance subsisting.

and re-pay, with interest, all monies expended by mortgagee to keep on foot policy;

said A. B., his executors, or administrators, will from time to time pay the said premium of £——, and any other premiums or sums for the time being necessary for keeping on foot the said existing policy, or any policy to be effected as aforesaid, on the first day on which the same respectively ought to be paid, and forthwith deliver the receipt for the same to the said C. D., his executors, administrators, or assigns; and will, on demand, pay to the said C. D., his executors, administrators, or assigns, all monies (if any) which shall be expended by him or them in keeping on foot the said existing policy, or effecting or keeping on foot any new policy in lieu thereof, with interest thereon, at the rate aforesaid, from the time or respective times of the same having been expended; AND THAT, until such monies shall be re-paid, with interest, the said existing policy, and any new policy to be effected as aforesaid, and the monies to become payable under the same respectively, shall be charged with the payment thereof (*a*); AND THAT he the said A. B. now hath power to assign the said premises unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, free from incumbrances; AND THAT he the said A. B., his

—that till re-payment, the same shall be a charge on the premises;

—for right to assign,

(*a*) The two preceding covenants (except the engagement by the mortgagor to pay the premiums) may be dispensed with, if it is wished to shorten the deed, as they do little more than particularise the rules of equity. See *Hodgson* v. *Hodgson*, 2 Keen, 704; *Burridge* v. *Row*, 1 You. & Coll. N. C. 183.

executors, and administrators, and all other persons lawfully or equitably claiming any estate or interest in the premises, will at all times, at the request of the said C. D., his executors, administrators, or assigns, but at the cost of the said A. B., his executors or administrators, do and execute all such acts and assurances for further or better assuring the said premises unto the said C. D., his executors, administrators, and assigns, in manner aforesaid, and for enabling him and them to receive the monies assured or to become payable under the said policy or policies, as by him or them shall be reasonably required. AND IT IS HEREBY DECLARED, that, if default shall be made in payment of the said sum of £—— [*the sum already owing*], or the interest thereon, or any part thereof respectively, on the said —— day of —— next, or in payment on demand of any other principal money or interest hereinbefore covenanted to be paid, it shall be lawful for the said C. D., his executors, administrators, and assigns, without any further consent on the part of the said A. B., his executors, administrators, or assigns, to sell the said policy and premises hereinbefore expressed to be hereby assigned, or any new policy to be effected, as aforesaid, either by way of surrendering the same to the office by which the same respectively has been or may be granted, or otherwise, and either by public auction or private contract, with full power to buy in or to rescind any contract for sale, and to resell without being responsible for any loss which may be occa-

and for further assurance.

Power of sale.

sioned thereby, AND to do and execute all such acts and assurances for effectuating any such sale as he or they shall think fit: PROVIDED ALWAYS, and it is hereby declared that the said C. D., his executors, administrators, or assigns, shall not execute the power of sale hereinbefore contained until he or they shall have given to the said A. B., his executors, administrators, or assigns, or left at his or their usual or last known place of abode, a notice in writing to pay off the monies for the time being owing on the security of these presents, and default shall have been made in such payment for —— calendar months after giving or leaving such notice, or until there shall be more than seven calendar months' interest owing upon some principal money for the time being owing on the security of these presents. [*Purchasers not to be bound to see that such events have happened. Mortgagee's receipt to be a discharge to purchasers. Trusts of the purchase-money. Mortgagee's indemnity clause*, *supra*, *pp.* 155, 156]. PROVIDED, LASTLY, that the total amount of money hereby secured, or to be ultimately recoverable hereupon, shall not exceed the sum of £—— (*a*). IN WITNESS &c.

Power not to be exercised till certain events happen.

Limitation of amount to be secured.

(*a*) This provision is necessary to prevent the necessity of stamping the deed with a 25*l.* stamp, as for an indefinite sum.

XXIV.

Mortgage *of a* Contingent Estate *in* Freeholds, *and of a* Policy *of* Assurance.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the one part, and C. D., of &c. [*mortgagee*], of the other part. WHEREAS &c. [*recital of the creation of the contingent estate, see recital, supra, p.* 118]. AND WHEREAS the said C. D. has agreed to lend the said A. B. the sum of £——, upon having the repayment of the same, with interest, as hereinafter mentioned, secured in manner hereinafter appearing. AND WHEREAS, as part of the said intended security, the said A. B. hath effected an assurance in the name of the said C. D. with the —— Assurance Society, by a policy numbered ——, dated ——, under the annual premium of £——, and for the sum of £—— to become payable if the said A. B. shall die in the lifetime of the said ——. NOW THIS INDENTURE WITNESSETH, that &c. [*payment of, and receipt for consideration; and covenant to pay the principal and interest, supra, p.* 136.] AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, he the said A. B. doth hereby grant and dispose

Parties.

Recital of creation of estate;

—of agreement for mortgage;

—of a policy of assurance having been effected.

Witnesseth.

Covenant to pay.

Witnesseth further conveyance of the estate.

of (*a*) unto the said C. D. and his heirs ALL THAT &c. [*see the description of the parcels and general words, and the estate clause, supra, p.* 119], TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns, subject to the estate for life therein of the said ——, and to the event of the estate and interest therein of the said A. B. being defeated by his death in the lifetime of the said ——: PROVIDED ALWAYS, that, if the said A. B., his heirs, executors, administrators, or assigns, shall pay to the said C. D., his executors, administrators, or assigns, the said sum of £——, with interest for the same in the meantime, at the rate of £— per cent. per annum, on the said —— day of —— next, without any deduction or abatement whatsoever, then the said C. D., his heirs, executors, administrators, or assigns, will at any time thereafter, upon the request and at the cost of the said A. B., his heirs, executors, administrators, or assigns, re-convey the said premises (subject as aforesaid) unto the said A. B., his heirs, and assigns, and assign the aforesaid policy of assurance unto the said A. B., his executors, administrators, and assigns, or as he or they shall respectively direct, free from incumbrances by the said C. D., his heirs, executors, administrators, or assigns [*trusts of the policy, supra, p.* 174; *covenant to pay interest if the prin-*

Habendum.

Proviso for redemption.

Trusts and covenants.

(*a*) See the words of sect. 6 of the new statute, supra, p. 84.

cipal remain unpaid after the day appointed, supra, p. 138 ; *covenants as to the policy, supra, pp.* 177, 178 ; *covenants for right to convey the land, and for further assurance of the land and policy, see supra, pp.* 120, 177]. And it is hereby de- Power of sale.
clared, that, if default shall be made in payment of the said sum of £——, or the interest thereon, or any part thereof respectively, on the said —— day of —— next, it shall be lawful for the said C. D., his executors, administrators, or assigns, at any time or times thereafter, without any further consent of the said A. B., his heirs, executors, administrators, or assigns, to sell the said premises hereinbefore expressed to be hereby granted and disposed of, and the said existing policy, or any new policy to be effected as aforesaid, either together or separately, and as to the said premises hereinbefore expressed to be hereby granted and disposed of, either during the life of the said ——, or after her death, and either with or without the concurrence of any other person or persons interested in the aforesaid hereditaments, and as to any such policy, either by way of surrender to the office by which the same has been or may be granted or otherwise, and as to all the said premises, either by public auction &c. [*supra, pp.* 164—166] (*a*). In witness &c.

(*a*) As the property is partly real and partly personal, the ultimate trust of the surplus had better be for the mortgagor, his executors, administrators, and assigns, as personal estate. See supra, p. 166.

XXV.

TRANSFER *of a* MORTGAGE, *the* MORTGAGOR *not being a* PARTY.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagee*], of the one part, and C. D., of &c. [*transferee*], of the other part. WHEREAS

Recital of old mortgage; —that principal and certain interest is now owing; &c. [*recital of the mortgage, supra, p.* 107]. AND WHEREAS the said sum of £——, together with £—— for interest thereon from the —— day of —— last, is now owing to the said A. B. on the said security. AND WHEREAS the said C. D. has agreed to pay the said A. B. the said sums of £—— and £——, making together the sum of £——, upon having such transfer of the said mortgage-debt, and of the securities of the same, as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the sum of £—— this day paid to the said A. B. by the said C. D., (the receipt whereof the said A. B. doth hereby acknowledge), he the said A. B. doth hereby assign unto the said C. D., his executors, administrators, and assigns, ALL THAT the said sum of £—— [*the principal*] now owing to the said A. B. on the security aforesaid, and all interest now due, and henceforth to accrue due, for

—of agreement for transfer.

Witnesseth.

Consideration.

Receipt.

Assignment of debt.

the same, AND the full benefit of the covenants entered into by the said [*the mortgagor*] in the said indenture of the —— day of —— [*the mortgage*], and of all other securities for the same premises, AND all the estate and interest of the said A. B. in the premises, and every part thereof, TOGETHER WITH power for the said C. D., his executors, administrators, and assigns, to sue and give receipts for the said sum of £——, and all interest due, and to accrue due, for the same, in the name or names of the said A. B., his executors, or administrators, TO HOLD the said premises unto the said C. D., his executors, administrators, and assigns, absolutely. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the consideration aforesaid, the said A. B. doth hereby grant unto the said C. D., his heirs and assigns, ALL THAT the said —— hereditaments and premises by the said indenture of the —— day of —— expressed to be released [*or* "appointed," *or* "appointed and released" &c., *as the case may be*], AND all the estate and interest of the said A. B. in the said premises, TO HOLD the said premises UNTO the said C. D., his heirs and assigns, TO THE USE of the said C. D., his heirs and assigns, SUBJECT to the equity of redemption subsisitng therein under the said indenture of the —— day of —— [*the mortgage*], and with the benefit of the power of sale therein contained. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and admi-

Power of attorney.

Habendum.

Witnesseth.

Conveyance.

Parcels.

Habendum.

Covenant against incumbrances.

nistrators, covenant with the said C. D., his heirs, executors, and administrators, respectively, that the said sum of £——, with interest thereon from the said —— day of ——, is now owing to him the said A. B. on the aforesaid security, and that he the said A. B. hath not made or done, or knowingly suffered, any act, deed, or thing whereby the said monies, hereditaments, and premises, or any part thereof, respectively, can be impeached, encumbered, or affected in anywise howsoever. IN WITNESS &c.

XXVI.

TRANSFER *of a* MORTGAGE *by the* EXECUTORS *and* DEVISEES *of the* MORTGAGEE, *the* MORTGAGOR *receiving a* FURTHER ADVANCE.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., and C. D., of &c. [*executors and devisees of mortgagee*], of the first part, E. F., of &c. [*mortgagor*], of the second part, and G. H., of &c. [*transferee*], of the third part. WHEREAS &c. [*recital of the mortgage, ut supra, p.* 107]. AND WHEREAS the said [*mortgagee*] duly made and signed his last will, dated the —— day of ——, and thereby devised estates vested in him upon mortgage to the said A. B. and C. D., their heirs and assigns, and appointed the said A. B.

Recital of mortgage of the will of the mortgagee;

and C. D. executors of his said will; AND WHEREAS the said [*mortgagee*] died without having revoked or altered his said will, and the same was proved by the said A. B. and C. D. in the Court of —— on the —— day of ——. AND WHEREAS the said sum of £—— is now owing to the said A. B. and C. D. on the said security, but all interest thereon has been paid up to the day of the date of these presents. AND WHEREAS the said G. H. has agreed to pay the said A. B. and C. D. the said sum of £——, and to lend the said E. F. the further sum of £—— upon having such transfer of the said mortgage-debt and interest, and of the securities for the same, as is hereinafter contained, and upon having the re-payment of the said sums of £—— and £——, with interest, as hereinafter mentioned, secured in manner hereinafter appearing. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the sum of £—— [*original debt*] to the said A. B. and C. D. this day paid by the said G. H., (the receipt whereof the said A. B. and C. D. do hereby acknowledge), and of the sum of £—— to the said E. F. this day paid by the said G. H., (the payment and receipt respectively of which sums of £—— and £——, making together the sum of £——, the said A. B. doth hereby acknowledge), they the said A. B. and C. D. do hereby assign unto the said G. H., his executors, administrators, and assigns, ALL THAT the said sum of £—— [*the original debt*] now

—of his death, and probate of his will;

—that mortgage-money is still due;

—of agreement for transfer, and further advance.

Witnesseth.

Consideration.

Receipt.

Transfer of mortgage-debt.

owing to the said A. B. and C. D., on the security aforesaid, and all interest henceforth to accrue due for the same, AND all the estate and interest of the said A. B. and C. D. in the premises, and every part thereof, TO HOLD the said premises unto the said G. H., his executors, administrators, and assigns, absolutely. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and for the considerations aforesaid, he the said E. F. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his executors and administrators, that he the said E. F., his heirs, executors, or administrators, will pay to the said G. H., his executors, administrators, or assigns, the sum of £—— [*the total amount*], together with interest thereon in the meantime at the rate of £—— per cent. per annum, on the —— day of —— next, without any deduction or abatement whatsoever. AND THIS INDENTURE FURTHER WITNESSETH, that, in further pursuance of the said agreement, and for the considerations aforesaid, they the said A. B. and C. D., by the direction of the said E. F., do hereby grant, and he the said E. F. doth hereby grant and confirm, unto the said G. H., his heirs and assigns, [*parcels—general words, supra, p.* 96], AND all the estate and interest of the said A. B., C. D., and E. F., and every of them, in the said premises, and every part thereof, TO HOLD the said premises UNTO the said G. H., his heirs and assigns, TO THE USE of the said G. H., his

Habendum.

Witnesseth.

Covenant for re-payment of principal, with interest, at the end of six months.

Witnesseth.

Conveyance.

Habendum.

heirs and assigns, discharged from all equity of redemption under the said indenture of the —— day of —— [*the original mortgage*]. [*Proviso for redemption, supra, p.* 137, *distinguishing the property as that* "hereinbefore expressed to be hereby granted"]. AND EACH of them the said A. B. and C. D. doth hereby, for himself, his heirs, executors, and administrators, covenant with the said G. H., his heirs, executors, administrators, and assigns, respectively, that they the said A. B. and C. D., respectively, have not made or done, or knowingly suffered, any act, deed, or thing, whereby the said monies, hereditaments, and premises, or any part thereof, respectively, can be impeached, encumbered, or affected in anywise howsoever, or whereby they are prevented from assigning and conveying the same premises, or any part thereof, respectively, in manner aforesaid. [*Mortgagor's covenants for payment of interest; for title; proviso for quiet enjoyment till default; power of sale; and mortgagee's indemnity clause as in original mortgage, supra, p.* 138 *et seq.*] IN WITNESS &c.

Covenant by executors against incumbrances.

THE SCHEDULE to which the above-written INDENTURE refers.

XXVII.

Re-conveyance *by* Heir *and* Executors *of a* Mortgagee.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., [*heir-of-law of mortgagee*], of the first part, C. D., of &c., and E. F., of &c., [*executors*], of the second part, and G. H., of &c., [*mortgagor*], of the third part. WHEREAS &c. [*recital of the mortgage, supra, p.* 107]. AND WHEREAS the said [*mortgagee*] duly made and signed his last will, dated the —— day of ——, and thereby appointed the said C. D. and E. F. executors thereof, but did not thereby devise the legal estate in the said hereditaments, and died leaving the said A. B. his heir-at-law, and without having revoked or altered his said will, and the same was proved by the said C. D. and E. F. in the —— Court of ——, on the —— day of ——. AND WHEREAS the said sum of £—— is now owing to the said C. D. and E. F. on the said security, but all interest thereon has been paid up to the day of the date of these presents, and the said G. H. is desirous of paying off the said sum of £——, and of having such re-conveyance as is hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in consideration of the sum of £—— to the said C. D. and E. F. this

Recital of mortgage;

—of will, and death, and partial intestacy of mortgagee, and probate of his will;

—of mortgage debt being due, and of mortgagor's desire to pay off the mortgage.

Re-conveyance.

Witnesseth.

day paid by the said G. H., (the receipt whereof the said C. D. and E. F. do hereby acknowledge), he the said A. B., by the direction of the said C. D. and E. F., doth hereby grant, and they the said C. D. and E. F. do hereby release, unto the said G. H., his heirs and assigns [*parcels and estate clause, supra, pp.* 96, 183], TO HOLD the said premises UNTO the said G. H., his heirs and assigns, TO THE USE of the said G. H., his heirs and assigns, discharged from the said mortgage-debt of £——, and all interest for the same, and from all claims of the said A. B., C. D., and E. F., under the said indenture of the —— day of —— [*the mortgage*]. [*Covenant by the heirs and executors against incumbrances, supra, p.* 187]. IN WITNESS &c. Habendum.

XXVIII.

ASSIGNMENT *of a* TERM *to a Trustee for a* MORTGAGEE.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*trustee of the term*], of the first part; C. D., of &c. [*existing mortgagee*], of the second part; E. F., of &c. [*mortgagor*], of the third part; G. H., of &c. [*new mortgagee*], of the fourth part; and I. K., of &c. [*new trustee*], of the fifth part. Parties.

WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], Recital of the creation of the term;

ALL THOSE &c. [*parcels, verbatim from the deed*], with the appurtenances, were demised unto the said ——, his executors, administrators, and assigns, for the term of —— years from the date thereof.

—of the conveyance of the freehold on the last assignment of the term;

AND WHEREAS, after divers mesne assurances, and acts in the law, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], the reversion and inheritance expectant on the said term in the said premises were conveyed to the use of the said C. D., his heirs and assigns, subject to a proviso for redemption thereof on payment by the said E. F., his heirs, executors, administrators, or assigns, unto the said C. D., his executors, administrators, or assigns, of the sum of £——, with interest for the same after the rate, and at the time therein mentioned. AND

—of the last assignment of the term;

WHEREAS, after divers mesne assignments and acts in the law, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], the said premises comprised in the said term were assigned to X. Y., his executors, administrators, and assigns, for the then residue of the said term, in trust for the said C. D., his executors, administrators, and assigns, for better securing to him and them the payment of the said sum of £—— and interest, and subject thereto in trust for the said E. F., his heirs and assigns, and to attend the inheritance.

—of the deed of even date;

AND WHEREAS, by an indenture bearing even date with, but executed before, these presents, and expressed to be made between the said C. D., of the first part, the said E. F., of the second

part, and the said G. H., of the third part, in consideration of the sum of £—— paid by the said G. H. to the said C. D., at the request of the said E. F., the said C. D. hath assigned unto the said G. H., his executors, administrators, and assigns, the said mortgage-debt and interest, and hath conveyed unto the said G. H., his heirs and assigns, the said premises comprised in the said term, to hold the same unto and to the use of the said G. H., his heirs and assigns, subject to a proviso in the indenture now in recital contained for redemption, &c., *ut supra*. [*Recite the devolution of the term from X. Y. to A. B.*] AND WHEREAS the said G. H. is desirous that the said premises comprised in the said term shall be assigned by the said A. B. to the said I. K., his executors, administrators, and assigns, upon the trusts hereinafter declared. NOW THIS INDENTURE WITNESSETH, that, for effectuating the said desire, and in consideration of the premises, he the said A. B., by the direction of the said C. D., and with the approbation of the said E. F. and upon the nomination of the said G. H., doth hereby assign unto the said I. K., his executors, administrators, and assigns, ALL SUCH of the said premises by the said deed of even date herewith expressed to be conveyed, as by the said indenture of the —— day of —— [*the last assignment of the term*] were assigned unto the said X. Y., his executors, administrators, and assigns, with their appurtenances, AND all the estate and interest of the said A. B. in the said premises, and

—of the devolution of the term;

—of the desire that it may be assigned.

Witnesseth.

Assignment.

Parcels.

Habendum. every part thereof, TO HOLD the said premises UNTO the said I. K., his executors, administrators, and assigns, for the residue of the said term of —— years, UPON TRUST for the said G. H., his executors, administrators, and assigns, and to assign the same as he or they shall direct, for better securing to him and them the payment of the said sum of £—— and interest, and subject thereto in trust for the said E. F., his heirs and assigns, and to permit the same to attend the reversion and inheritance of the premises therein comprised; [*trustee's covenant against incumbrances, see supra, p.* 109]. IN WITNESS &c.

In trust for the purchaser or mortgagee, and to attend.

Leases.

XXIX.

LEASE *of a* HOUSE *in a* TOWN.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*lessor*], of the one part, and C. D., Witnesseth. of &c. [*lessee*], of the other part, WITNESSETH, Demise. that the said A. B. doth hereby demise unto the said C. D., his executors, administrators, and as- Parcels. signs, ALL THAT dwelling-house, numbered ——, in —— street, in the parish of ——, in the town of ——, with the yards, out-buildings, and ground

held therewith, as the same are delineated in the plan in the margin of these presents, and therein coloured ——, TOGETHER WITH all ways, lights, sewers, watercourses, rights, privileges, easements, advantages, and appurtenances thereto belonging, or usually held or enjoyed therewith, EXCEPT, nevertheless, out of this demise, all &c. [*insert any reservation of a right of watercourse from adjoining houses, or the like*], TO HOLD the said premises, except as aforesaid, UNTO the said C. D., his executors, administrators, and assigns, for the term of —— years from the date of these presents; RENDERING, therefore, during the said term, the yearly rent of £——, clear of all present and future rates, taxes, and deductions, by equal payments, on the —— day of —— and the —— day of —— in every year, the first of such half-yearly payments to be made on the —— day of —— next. AND THE SAID C. D. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said A. B., his heirs and assigns, that he the said C. D., his executors, administrators, or assigns, during the said term, will pay the yearly rent hereinbefore reserved, on the days and in manner aforesaid; AND will bear and pay all rates, taxes, and outgoings, now payable, or hereafter to become payable, whether by the landlord or tenant, in respect of the said premises; AND will keep the said premises insured against loss or damage by fire in such office as the said A. B., his heirs or assigns,

General words.

Exception.

Habendum.

Reddendum.

Covenants by the lessee, to pay the rent

and taxes,

and keep the premises insured,

shall approve, and will, when required, produce the policy of such insurance, and the current year's receipt for the premium thereon, to the

and in repair,

said A. B., his heirs or assigns; AND will keep the said premises in good condition and complete repair, and without any alteration, except such as the said A. B., his heirs or assigns, shall approve

and yield up at the end of the term;

of; AND, at the expiration or sooner determination of the said term, so yield up the same unto the

and that landlord may enter to inspect;

said A. B., his heirs or assigns. AND that the said A. B., his heirs and assigns, and his and their agents, surveyors, and workmen, may, at all reasonable times during the said term, enter upon

and that the same shall be used as a dwelling-house only;

the said premises to inspect the same; AND THAT no offensive business or occupation or nuisance shall be carried on or committed on the said premises, and that the same shall be used as a private dwelling-house only. AND THAT the said

and shall not be assigned or under-let.

C. D., his executors, administrators, or assigns, will not assign or under-let the said premises without the consent in writing of the said A. B., his heirs or assigns: PROVIDED ALWAYS, that, on

Proviso for re-entry.

any breach or non-observance of any of the covenants hereinbefore contained, the said A. B., his heirs and assigns, may re-enter upon the said premises, and re-possess and hold the same as if this

Covenant by the lessor for quiet enjoyment.

demise had not been made. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, COVENANT with the said C. D., his executors, administrators, and assigns, that he and they, performing and observing all the

covenants hereinbefore contained, may hold and enjoy the said premises during the said term, without any interruption by the said A. B., his heirs or assigns, or any person lawfully claiming under him or them. IN WITNESS &c.

XXX.

LEASE *of a* FARM.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*lessor*], of the one part, and C. D., of &c. [*lessee*], of the other part, WITNESSETH, that the said A. B. doth hereby demise unto the said C. D., his executors, administrators, and assigns, ALL THAT farm and lands, in the parish of ——, in the county of ——, called —— farm, with the farm-house and other buildings thereon, the particulars whereof are specified in the schedule hereunder written, TOGETHER WITH all commons, ways, watercourses, rights, privileges, easements, commodities, and appurtenances whatsoever, to the said hereditaments or any part thereof belonging or usually held or enjoyed therewith, EXCEPT and reserved, nevertheless, out of this demise, all timber and other trees, and the right to enter and cut and remove the same, TO HOLD the said premises, except as aforesaid, unto the said C. D., his executors, administrators, and

Parties. Witnesseth. Demise. Parcels. General words. Habendum.

assigns, for the term of —— years from the day
Reddendum. of the date of these presents; RENDERING therefore, during the said term, the yearly rent of £——, clear of all present and future rates, taxes, and deductions, by equal payments, on the —— day of —— and the —— day of —— in every year, the first of such half-yearly payments to be
Covenants by the lessee, to pay the rent made on the —— day of —— next. AND THE SAID C. D. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said A. B., his heirs and assigns, that he the said C. D., his executors, administrators, or assigns, during the said term, will pay the yearly rent hereinbefore reserved on the days and in
and taxes, manner aforesaid; AND will bear and pay all rates, taxes, and outgoings, now payable or hereafter to become payable, whether by the landlord or tenant
and keep the premises insured, in respect of the said premises; AND will keep the said farm-house and buildings insured against loss or damage by fire in such office as the said A. B., his heirs or assigns, shall approve, and will, when required, produce the policy of such insurance, and the current year's receipt for the premium thereon, to the said A. B., his heirs or
and in good condition, assigns; AND will keep the said farm-house and buildings, and all fences, ditches, gates, and fixtures upon or about the said farm and lands, in good condition and complete repair, and without any alteration, except such as the said A. B., his
and properly, cultivated; heirs or assigns, shall approve; AND will cultivate, manure, and manage the said farm and lands in a

fair and proper manner, according to the most approved course of husbandry, and will not convert into arable land any land now in pasture without the consent of the said A. B., his heirs or assigns; AND will, at the expiration or sooner determination of the said term, yield up the said premises in such good condition and repair, and in fair and proper order as aforesaid, unto the said A. B., his heirs or assigns; AND that the said A. B., his heirs and assigns, and his and their agents, surveyors, and workmen, may, at all reasonable times during the said term, enter upon the said premises to inspect the same, and to cut and remove timber and other trees; AND that the said C. D., his executors, administrators, or assigns, will not assign or under-let the said premises, or any part thereof, without the consent in writing of the said A. B., his heirs or assigns: PROVIDED ALWAYS, that, on any breach or non-observance of any of the covenants hereinbefore contained, the said A. B., his heirs and assigns, may re-enter upon the said premises, and re-possess and hold the same as if this demise had not been made. AND THE SAID A. B. doth hereby for himself, his heirs, executors, administrators, and assigns, COVENANT with the said C. D., his executors, administrators, and assigns, that he and they, performing and observing all the covenants hereinbefore contained, may hold and enjoy the said premises during the said term without any interruption by the said A. B., his heirs or assigns, or any per-

and yield up at the end of the term,

and that landlord may enter to inspect;

—and that the premises shall not be assigned or under-let without consent.

Proviso for re-entry.

Covenant by the lessor for quiet enjoyment.

son lawfully claiming under him or them. IN WITNESS &c.

THE SCHEDULE to which the above-written INDENTURE refers.

XXXI.

MINING LEASE.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*lessor*], of the one part, and C. D., of &c. Witnesseth. [*lessee*], of the other part, WITNESSETH, that the Demise. said A. B. doth hereby demise unto the said C. D., Parcels. his executors, administrators, and assigns, ALL metallic mines and minerals, open and hidden, which belong to the said A. B., in the parish of ——, in the county of ——, within the limits following [*description of limits*], within which limits a certain mine called —— is now working [*or* "has been worked"]: AND ALL liberties which the said A. B. has power to grant, of searching for, getting, making merchantable, and removing the said mines and metallic minerals, EXCEPT and reserved unto the said A. B., his heirs and assigns, all mines and ores of ——, and unrestricted liberty for him and them, and his and their agents, servants, and workmen, to search for, get, make merchantable, and remove all mines and ores of ——, and all clay-stone, earth, and minerals, not

hereby demised, and to communicate from and to any adit or working within the limits aforesaid to and from any adit or working beyond the same limits, and to examine and take plans of all workings under this demise; and in such searching for, communicating, examining, and taking plans, to use the adits, shafts, machinery, and tackle, in or about the mines hereby demised, making reasonable compensation for making use of the said machinery and tackle, except in examining and taking plans, TO HOLD the said premises hereby demised unto the said C. D., his executors, administrators, and assigns, henceforth for the term of —— years; RENDERING therefore a money-rent equal to one-fifteenth of the monies for which the minerals sold shall be sold, except the minerals a share whereof shall have been previously rendered, AND RENDERING so often and to such extent as shall be required by notice, (the same to be determinable by notice), as a mineral-rent, one-fifteenth of all minerals which for the time being shall have been gotten and not sold, the said minerals to be made merchantable before sale, or render of a share thereof; and the said money and mineral-rents to be clear of all present and future taxes, rates, and assessments, and all other charges and deductions whatsoever, and to be paid or delivered as hereinafter mentioned. AND THE SAID C. D. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said A. B., his heirs and assigns, that the said C. D., his executors, administrators, and assigns, will work the said

Habendum.

Reddendum.

Covenants by lessee.

mines upon the cost-book, and not the scrip system, and will, without delay, make merchantable all minerals gotten; AND, within reasonable periods during the said term, sell on the said lands the mines and minerals under which are hereinbefore demised, by public ticketings, and not elsewhere nor otherwise, (unless with consent), all the said minerals, except those in respect whereof a mineral-rent shall previously have been rendered; AND will give ten days' notice of the day, hour, and place of every such sale, and of the minerals to be offered for sale; AND WILL, within ten days after every such sale, give a return of the minerals sold thereat, with their prices and purchasers; AND WILL, immediately after every such sale, and before the removal of the minerals sold, pay the money-rent thereby ascertained; AND WILL, without intermission, lay out on the surface of the aforesaid lands all minerals in respect whereof a mineral-rent shall be the required render, and divide the same into fifteen shares of equal value, AND give ten days' notice of the day, hour, and place of every division, and, immediately after every division, render the mineral-rent thereby ascertained; AND WILL pay all present and future taxes, rates, and assessments, and all other charges and deductions whatsoever, upon or in respect of the premises hereby demised, or the aforesaid minerals or sale-monies, or the aforesaid money or mineral-rents, or any part thereof, respectively; AND WILL throughout the said term with not less than —— able-bodied miners, in the best and

most approved manner, and without intermission, except while prevented by inevitable accident or repairs, try the lands, the mines and minerals under which are hereby demised, and effectually drain and work the mines hereby demised, and for the time being open or found, and make, erect, and maintain, all shafts, adits, buildings, engines, machinery, and apparatus, necessary for those purposes; AND WILL NOT, unless with consent, drive any adit within —— fathoms of the extremity of any of the said lands, and will substantially sustain and maintain all the workings of the said mines, and all engines, machinery, apparatus, buildings, and fixtures, in a proper course of working and repair, and, at the end or other determination of the said term, deliver up the said mines, workings, and buildings, in good condition and perfect working order, unto the said A. B., his heirs or assigns; AND, at the end of the said term, if required by notice one calendar month or upwards previously thereto, or upon the sooner determination of the said term, if required by notice, deliver up the said engines, machinery, and apparatus, and all fixtures belonging to the said C. D., his executors, administrators, or assigns, or the parts thereof specified in such notice, to the said A. B., his heirs or assigns, at a valuation to be agreed on or to be determined by two arbitrators, or their umpire, in the usual way; AND WILL throughout the said term keep proper books of account of the workings of the

said mines, and of the disposal of the minerals obtained, and will keep the said books and the cost-book or cost-books, and any plans which may be made of the working of the said mines, on the lands aforesaid, and will give copies of and extracts from the same books and plans as shall be required; AND WILL also permit the said books and plans to be inspected and copied by the person or persons named in that behalf in any notice. AND will make good, or make compensation for, all damage done by him the said C. D., his executors, administrators, or assigns, which the said A. B., his heirs or assigns, or the said C. D., his executors, administrators, or assigns, is, are, or may be compellable to make good or make compensation for, and shall indemnify the said A. B., his heirs or assigns, therefrom, and from all expenses in relation thereto; AND THAT the premises hereby demised, or any part thereof, shall not be assigned or under-let without consent. AND IT IS HEREBY DECLARED, that every notice and consent hereinbefore mentioned means, except where otherwise hereinbefore expressed, notice or consent on behalf of the said A. B., his heirs or assigns, in writing, to be given and signed by him or them, or some person authorised by him or them, and, in case of notice, fixed within the limits aforesaid; AND every such notice shall be notice to the said C. D., his executors, administrators, and assigns; AND every notice, return copy, extract, and plan, hereinbefore covenanted to be given by the said C. D., his exe-

Declaration as to notices and consents.

cutors, administrators, or assigns, shall be made and given at his or their own expense, and be signed by him or one of them, or the captain of the said mines, and shall be given to the said A. B., his heirs or assigns, or some person authorised by him or them to receive the same: PROVIDED ALWAYS, that, on failure by the said C. D., his executors, administrators, or assigns, to perform or observe any of the covenants hereinbefore contained, the said A. B., his heirs or assigns, may stop, seize, and distrain all minerals, engines, machinery, apparatus, fixtures, goods, chattels, and effects, in and about the mines hereby demised, or within the limits aforesaid, and every distress there made take away and retain to his or their use; AND, if any money-rent shall be due, may sell the said distress, as in common cases of distress for rent, and, out of the monies arising thereby, retain such money-rent, and any further money-rent which may become due, and the costs of making, keeping, and selling, such distresses; and on every such failure as aforesaid, or if the premises hereby demised shall be assigned or assignable by means of the bankruptcy or insolvency of the said C. D., his executors, administrators, or assigns, the said A. B., his heirs or assigns, may re-enter and enjoy the premises hereby demised, as if these presents had not been executed; but, until any such failure, or until the said premises shall be assigned or assignable as aforesaid, the said C. D., his executors, administrators, and assigns, may enjoy the said premises without eviction or (ex-

Powers of distress and entry.

cept as hereinbefore excepted and reserved) interruption by the said A. B., his heirs or assigns.

Agreement for granting a future lease.

AND IT IS HEREBY AGREED AND DECLARED, that, if the said C. D., his executors, administrators, or assigns, shall, throughout the said term, perform and observe all the covenants and conditions hereinbefore contained, and shall, not less than —— calendar months before the end of the said term, deliver to the said A. B., his heirs or assigns, an agreement in writing by three responsible persons, to join as co-lessees, and such persons shall be approved of by the said A. B., his heirs or assigns, then and in such case the said C. D., his executors, administrators, and assigns, together with such intended co-lessees, shall be entitled to a lease from the said A. B., his heirs or assigns, of the premises hereby demised, for a term not exceeding —— years from the date of these presents at the rents hereinbefore reserved, and under and subject to such covenants, conditions, and agreements, as to the said A. B., his heirs or assigns, shall seem reasonable, but so that the persons to whom such further lease shall be granted, shall pay all costs of such lease, and also (if required) of a survey and plan upon such scale as the said A. B., his heirs or assigns, shall require of the premises to be demised (*a*). IN WITNESS &c.

(*a*) This clause was framed for insertion in leases granted for short terms for the purpose of searching for minerals; it is, of course, not a necessary part of the precedent in the text.

Partition.

XXXII.

Partition.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., of the first part; C. D. of &c., and E. D. his wife, of the second part; and F. G., of &c. [*grantee to uses*], of the third part. Parties.

WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], one undivided moiety of the hereditaments intended to be hereby conveyed was limited to such uses, upon and for such trusts, intents, and purposes, and with, under, and subject to such powers, provisoes, and declarations, as the said A. B. should, by any deed or deeds, direct, limit, or appoint, and in default of, and until and subject to, such direction, limitation, or appointment, to the use of the said A. B., and his assigns, for his life, with remainder to the use of the said X. Y., and his heirs, during the life of the said A. B., in trust for him and his assigns, with remainder to the use of the said A. B., his heirs and assigns. Recital of title to one undivided moiety of the property;

AND WHEREAS the said C. D. is seised of the other undivided moiety of the same hereditaments for an estate in fee simple in possession, free from incumbrances. —of title to the other undivided moiety;

AND —of agree-

ment for partition. WHEREAS the said A. B. and C. D. have agreed to make partition of the said hereditaments in the shares and manner hereinafter appearing, and the said E. D. hath agreed to release her right of dower in the said undivided moiety of the said

Witnesseth. C. D. in the said hereditaments. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, he the said A. B. doth hereby direct,

Appointment. limit, and appoint, that the said undivided moiety comprised in the said indenture of the —— day of —— of the said hereditaments shall henceforth go and remain to the uses hereinafter limited.

Witnesseth. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consideration of the premises, he the said A. B., as to the undivided moiety comprised in the said indenture of the —— day of —— of

Conveyance. the said hereditaments, doth hereby grant and he the said C. D., as to his undivided moiety of the said hereditaments, doth hereby grant, and she the said E. D., as to the same undivided moiety, and with the concurrence of the said C. D., doth hereby release, unto the said

Parcels. F. G., and his heirs, ALL AND SINGULAR the —— and hereditaments situate in the parish of ——, in the county of ——, specified in the two schedules hereunder written, and delineated in the map drawn in the margin of these presents, and therein coloured —— and —— respectively [*general words, supra, p.* 97, AND all the estate and interest of the said A. B., C. D., and E. D., re-

spectively, in the said premises, TO HOLD the said premises UNTO the said F. G., and his heirs, TO THE USES hereinafter limited. AND IT IS HEREBY DECLARED, that the appointment and conveyance hereinbefore contained shall enure, AS TO the hereditaments comprised in the first schedule hereunder written, and in the said map coloured ——, with their appurtenances as aforesaid, TO SUCH USES &c. [*uses to bar dower in favour of A. B., supra, p.* 99]; and AS TO the hereditaments comprised in the second schedule hereunder written, and in the said map coloured ——, with their appurtenances as aforesaid, TO SUCH USES &c. [*uses to bar dower in favour of C. D., ib.*] AND EACH of them the said A. B. and C. D., so far as relates to the one undivided moiety to which he claims to be entitled as aforesaid of the said premises, doth hereby, for himself, his heirs, executors, and administrators, covenant with the said F. G., and his heirs, that, notwithstanding any act, deed, or thing by them the said A. B. and C. D respectively, or any of the ancestors of the said C. D., made or done, or knowingly suffered, they the said A. B., and the said C. D. and E. D., respectively, now have power to convey and assure the said premises to the uses and in manner aforesaid, free from incumbrances. AND that they the said A. B. and C. D. respectively, and their respective heirs, and all other persons lawfully or equitably claiming through or in trust for them respectively, or the

Habendum.

Declaration of uses.

Covenants by both parties, for right to convey free from incumbrances;

—for further assurance.

ancestors of the said C. D. will, at all times, at the cost of the party requiring the same, do and execute all such acts and assurances, for further or better assuring all or any of the said premises to the uses hereinbefore declared of the same respectively, as by the said A. B. and C. D., respectively, or their respective heirs, appointees, or assigns, shall be reasonably required. IN WITNESS, &c. (*a*).

THE FIRST SCHEDULE to which the above-written INDENTURE refers.

THE SECOND SCHEDULE to which the above-written INDENTURE refers.

Exchange.

XXXIII.

EXCHANGE.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c., a bachelor (*b*), of the one part, and C. D., of &c., and E. D., his wife, of the other part.

Recital of WHEREAS the said A. B. is seised of the here-

(*a*) This deed must be acknowledged by the married woman.

(*b*) See supra, p. 107, n. (*a*).

ditaments comprised in the first schedule hereunder written for an estate in fee simple in possession, free from incumbrances; and the said C. D. is seised of the hereditaments comprised in the second schedule hereunder written, for an estate in fee simple in possession, free from incumbrances. AND WHEREAS the said A. B. and C. D. have agreed to make an exchange, in manner hereinafter appearing, of the said hereditaments comprised in the said first and second schedules hereto respectively; and the said E. D. hath agreed to release her right of dower in the said hereditaments comprised in the said second schedule. NOW THIS INDENTURE WITNESSETH, that in pursuance of the said agreement, and in consideration of the hereditaments intended to be hereinafter conveyed in exchange by the said C. D. and E. D., he the said A. B. doth hereby grant unto the said C. D., and his heirs, ALL THOSE the —— and hereditaments situate in the parish of ——, in the county of ——, specified in the said first schedule hereunder written, and delineated in the map in the margin of these presents, and therein coloured —— [*general words and estate clause, supra, p.* 97], TO HOLD the said premises UNTO the said C. D., and his heirs, IN EXCHANGE for the said hereditaments intended to be hereinafter conveyed by the said C. D. and E. D.; AND TO SUCH USES &c. [*uses to bar dower in favour of C. D., supra, p.* 99]. AND THIS INDENTURE ALSO WITNESSETH, that, in further pursuance of the said agreement, and in consider-

estates in the property;

—of agreement for exchange.

Witnesseth.

Conveayance by one party.

Parcels.

Habendum.

Witnesseth.

Conveyance by the other party.

ation of the hereditaments hereinbefore conveyed in exchange by the said A. B., he the said C. D. doth hereby grant, and she the said E. D., with the concurrence of the said C. D., doth hereby release, unto the said A. B., his heirs and assigns, ALL THOSE the —— and hereditaments situate in the parish of ——, in the county of ——, specified in the said second schedule hereunder written, and delineated in the map in the margin of these presents, and therein coloured —— [*general words and estate clause, supra, p.* 97], TO HOLD the said premises UNTO the said A. B., his heirs and assigns, TO THE USE of the said A. B., his heirs and assigns, IN EXCHANGE for the said hereditaments and premises hereinbefore conveyed in exchange by the said A. B. AND it is hereby declared that no widow of the said A. B. shall be entitled to dower out of the said last-mentioned premises. [*Covenants for title—A. B. with C. D., for right to convey and further assurance of the* "premises firstly hereinbefore conveyed," *supra, p.* 97; *and C. D. with A. B., similar covenants as to* "the premises lastly hereinbefore conveyed."] IN WITNESS &c. (*a*).

Parcels.

Habendum.

THE FIRST SCHEDULE to which the above-written INDENTURE refers.

THE SECOND SCHEDULE to which the above-written INDENTURE refers.

(*a*) This deed must be acknowledged by the married woman.

Settlement.

XXXIV.

SETTLEMENT *on Marriage of a Sum of* STOCK.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*intended husband*], of the first part; C. D., of &c. [*intended wife*], of the second part; and E. F., of &c., G. H., of &c., and I. K., of &c. [*trustees*], of the third part; WITNESSETH, that, in consideration of a marriage intended to be shortly solemnised between the said A. B. and C. D., IT IS HEREBY AGREED AND DECLARED, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall hold the sum of £——, £— per Cent. —— Bank Annuities, belonging to the said C. D., and lately transferred by her into the names of the said E. F., G. H., and I. K., and the dividends thereof, IN TRUST for the said C. D., until the said intended marriage; and, after the solemnisation thereof, UPON TRUST that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, (hereinafter called the trustees or trustee), shall either permit the said sum of Bank Annuities, or any part thereof, to remain unaltered, or shall, with the consent in

Parties.

Witnesseth.

Declaration of trust;

—for the wife till the marriage.

Power to vary investments.

writing of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and, after the death of such survivor, at the discretion of them the said trustees or trustee, sell the same, or any part thereof, and lay out the monies produced by such sale, in their or his names or name, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, [or in the shares, stock or securities of any company incorporated by act of Parliament, and paying a dividend,] and shall, with such consent or at such discretion as aforesaid, vary the said investments if and as they or he shall think fit, AND SHALL pay the annual income of the said Bank Annuities, monies, stocks, funds, and securities, during the joint lives of the said A. B. and C. D., to the said C. D. for her separate use, independently of the said A. B., so that her receipts alone shall be sufficient discharges, and that she shall not have power to deprive herself thereof in anticipation; AND, after the death of either of them the said A. B. and C. D., to the survivor of them during his or her life; AND, after the death of the survivor, shall hold the said premises, and the annual income thereof, IN TRUST for the child, or for all or any such one or more of the children, of the said intended marriage, in such manner and form in every respect as the said A. B. and C. D. shall by any deed or deeds jointly appoint; AND, in default of such appointment, and so far as no such appointment shall extend, as the survivor of the

Trust for wife's separate use, for the joint lives;

—for survivor for life;

—for children of the marriage, as husband and wife shall jointly appoint;

in default, as survivor shall appoint;

said A. B. and C. D. shall, by any deed or deeds, or by will or codicil, appoint; AND, in default of any such appointment, and so far as no such appointment shall extend, IN TRUST for the children, or any the child, of the said intended marriage, who, being sons or a son, shall attain the age of twenty-one years, or, being daughters or a daughter, shall attain that age or marry, and if more than one, in equal shares: PROVIDED ALWAYS, that no child taking any part of the said premises under any such appointment as aforesaid shall, in default of appointment to the contrary, be entitled to any share of that part of the said premises of which no such appointment shall be made, without bringing his or her appointed share into hotchpot: PROVIDED ALWAYS, that the said trustees or trustee may, after the decease of the survivor of the said A. B. and C. D., or in the lifetime of them, or the survivor of them, if they, he, or she shall so direct in writing, raise any part or parts of the then expectant, presumptive, or vested share or fortune of any child under the trusts hereinbefore declared, not exceeding in the whole for any such child one-half part of his or her then expectant, presumptive, or vested share or fortune, and apply the same for his or her advancement or benefit. AND IT IS HEREBY DECLARED, that the said trustees or trustee shall, after the decease of the survivor of the said A. B. and C. D., apply the whole, or such part as the said trustees or trustee shall think fit, of the annual income of the share or fortune to which any

in default, equally.

Hotchpot clause.

Power of advancement.

Maintenance and education.

child shall, for the time being, be entitled in expectancy under the trusts hereinbefore declared, for or towards the maintenance or education of such child, either directly or to his or her guardians or guardian, without seeing to the application thereof, or requiring any account of the same:

Accumulation clause.

AND SHALL, during such suspense of absolute vesting, accumulate the residue (if any) thereof in the way of compound interest, by investing the same, and the resulting income thereof, from time to time, in or upon any such stocks, funds, shares, or securities as are hereinbefore mentioned, for the benefit of the person or persons who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulations of any preceding year or years, and apply the same for or towards the maintenance or education of the child or children who shall, for the time being, be presumptively entitled to the same respectively.

Disposition in default of children entitled under the preceding trusts.

AND IT IS HEREBY DECLARED, that, if there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then (without prejudice to the trusts hereinbefore declared) the said trustees or trustee shall hold the said trust premises, and the annual income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, upon the trusts following; (that is to say), if the said

C. D. shall survive the said A. B., then, after his death, and such default or failure of children as aforesaid, in trust for the said C. D.; but if the said C. D. shall die in the lifetime of the said A. B. then, after his death, and such default or failure of children as aforesaid, upon and for such trusts, intents, and purposes as the said C. D. shall, notwithstanding coverture, by will or codicil, appoint; and, in default of such appointment, and so far as no such appointment shall extend, in trust for such person or persons as, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the decease of the said C. D., if she had died possessed thereof intestate, and without having been married, such persons, if more than one, to take as tenants in common in the shares in which they would have been entitled under the same statutes.

Trustees' receipt clause.

AND IT IS HEREBY DECLARED, that the receipts or receipt in writing of the said trustees or trustee for any monies, stocks, funds, shares, or securities which may be paid or transferred to them or him in pursuance of these presents, or the trusts thereof, shall effectually discharge the person or persons paying or transferring the same therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof.

Power to appoint new trustees.

AND IT IS HEREBY DECLARED, that, if the said trustees hereby appointed, or any of them, or any trustee or trustees to be appointed as hereinafter is mentioned, shall die, or be desirous of being dis-

charged, or refuse or become incapable to act, then and so often the said A. B. and C. D., or the survivor of them, or the executors or administrators of such survivor, may appoint any other person or persons to be a trustee or trustees in the stead of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act. And, upon every such appointment, the said trust premises shall be so transferred that the same may become vested in the new trustee or trustees jointly with the surviving or continuing trustee or trustees, or solely, as the case may require; and every such new trustee shall (either before or after the said trust premises shall have become so vested) have the same powers, authorities, and discretion, as if he had been hereby originally appointed a trustee. And it is hereby declared, that the trustees or trustee for the time being of these presents shall be chargeable only with such monies as they or he respectively shall actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any of the trust monies shall be placed, nor for the insufficiency or deficiency of any stocks, funds, or securities, nor otherwise for involuntary losses; And that the said trustees or trustee for the time being may reimburse themselves or himself, out of the monies which shall come to their or his hands under the trusts aforesaid, all expenses to be incurred in or about the execution of the aforesaid trusts. In witness &c.

Trustees' indemnity clause.

XXXV.

Settlement *on* Marriage *of a* Reversionary Interest *in Personalty, and a* Policy *of* Assurance *on the Husband's Life.*

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*intended husband*], of the first part; C. D., of &c. [*intended wife*], of the second part; and E. F., of &c., G. H., of &c., and I. K., of &c. [*trustees*], of the third part. WHEREAS, under an indenture dated the —— day of ——, and expressed to be made between [*parties*], (being a settlement made in consideration of a marriage shortly after solemnised between the said —— and ——, the father and mother of the said C. D.), and of an appointment made in exercise of a power in the said settlement, by a deed-poll dated the —— day of this instant month of ——, and under the hands and seals of the said —— and ——, the said C. D. is entitled in reversion expectant on the death of the survivor of the said —— and ——, and subject to their life interests therein, absolutely to a —— share, and contingently to other shares, or another share, in the sum of £——, £— per Cent. —— Bank Annuities, now standing in the names of ——, as

Parties.

Recital of the wife's being entitled to a reversionary interest in a sum of stock;

—of a marriage having been agreed on;

trustees of the said settlement. And whereas a marriage is intended to be shortly solemnised between the said A. B. and C. D., and upon the treaty for the said intended marriage, it was agreed that the said absolute and contingent share and shares of the said C. D. in the said Bank Annuities should be settled upon the trusts hereinafter declared of the same.

—that the husband has insured his life in the trustees' names.

And whereas, in pursuance of a further agreement entered into on the treaty for the said intended marriage, the said A. B. hath effected an assurance on his life, in the names of the said E. F., G. H., and I. K., with the —— Assurance Office, by a policy numbered ——, in the sum of £——, and under the annual premium of £——, to the intent that the same may be settled upon the trusts hereinafter declared of the same.

Witnesseth.

Assignment by the wife to the trustees of her reversionary share of the sum of stock.

Now this indenture witnesseth, that, in pursuance of the said agreement in this behalf, and in consideration of the said intended marriage, she the said C. D., with the assent of the said A. B., doth hereby assign unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, all and singular the said absolute and contingent share and shares of the said C. D. in the said sum of £——, £— per Cent. —— Bank Annuities, and all the estate and interest of the said C. D. in the premises, to hold the said premises unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, subject to the estates for life therein of the said —— and ——, upon trust,

Habendum.

In trust.

that the said E. F., G. H., and I. K., and the survivors and survivor of them, (hereinafter called the trustees or trustee), shall, as soon as circumstances will permit, call in and obtain payment or transfer, to themselves or himself, of the said share or shares hereinbefore assigned in the said sum of Bank Annuities, or of the monies to be produced by the sale thereof, or of any part thereof, or of the stocks, funds, shares, or securities in which the same may be then invested, and shall either permit the same Bank Annuities, monies, stocks, funds, or securities, or any part thereof, to remain unaltered, &c. [*power to vary, with the addition of* "call in," *or other appropriate words; trust for wife's separate use; for the survivor for life; for the children of the marriage; hotchpot clause; powers of advancement, maintenance, and education; accumulation clause; trusts in default or failure of children, supra, pp.* 212 *et seq.*] AND THE SAID C. D. doth hereby, for herself, her heirs, executors, and administrators, COVENANT with the said E. F., G. H., and I. K., their executors and administrators, that, notwithstanding any act, deed, matter, or thing by the said C. D. made or done, or knowingly suffered, she the said C. D. now hath power to assign the said premises unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, subject as and in manner aforesaid, and free from incumbrances. AND THAT she the said C. D., her executors and administrators, and all persons lawfully or equitably

Covenants by the wife, for right to assign, free from incumbrances,

and for further assurance.

claiming through her, will, at all times, at the request of the said trustees or trustee, or of any person or persons interested in the premises, and at the cost of the said trust premises, do and execute all such acts and assurances for further or better assuring all or any of the said premises unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, in manner and subject as aforesaid, and upon the trusts hereinbefore declared, as shall be reasonably required. AND IT IS HEREBY DECLARED, that the said E. F., G. H., and I. K., their executors, administrators, and assigns, shall hold the said sum of £—— [*the sum assured by the policy*], and other the monies (if any) to become payable under the said policy of assurance, and the stocks, funds, shares, or securities in or upon which the same may be invested, UPON the trusts, and subject to the powers, hereinbefore declared concerning the monies to arise by the sale or calling in of the said share or shares hereinbefore assigned of the said sum of Bank Annuities, and the stocks, funds, shares, or securities in which the same may be invested, and the annual income thereof, or as near thereto as circumstances will permit; SAVE AND EXCEPT, that, in case there shall be no child of the said intended marriage, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then (without prejudice to the other trusts hereinbefore declared thereof by reference) and from and after the death of the said C. D.,

Trusts of the policy of assurance on the husband's life, declared by reference to the preceding trusts;

with a variation in case of no child of the marriage becoming entitled.

and such default or failure of children as aforesaid, the said trustees or trustee shall hold the said last-mentioned trust monies, stocks, funds, shares, or securities, and the annual income thereof, or so much thereof respectively as shall not have become vested or been applied under any of the trusts or powers herein contained, in trust for the said A. B., his executors, administrators, and assigns. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said E. F., G. H., and I. K., their executors and administrators, that, in case the said intended marriage shall take effect, he the said A. B. will at all times pay the said annual premium of £——, and such other monies (if any) as may become payable for keeping on foot the said policy, on the first day on which the same respectively ought to be paid, and will not do or suffer any act or thing whereby the said policy may become void or voidable, or the said trustees or trustee be hindered from receiving the monies to become payable under the same: PROVIDED ALWAYS, that the said trustees or trustee may, if they or he shall think fit, apply any part of the annual income of the said trust premises, or, if that be insufficient, then any part of the capital of the said trust premises, in payment of the said annual premium, or other the monies (if any) which may become payable for keeping on foot the said policy: PROVIDED NEVERTHELESS, that any neglect by the said trustees or trustee so to apply any part of the said annual income or

Covenant by the husband to keep on foot the policy of assurance.

Power to the trustees to pay premiums, &c. out of the income or capital of the trust funds.

Trustees not to be chargeable with a breach of trust if the

policy be not kept on foot.

capital, or to enforce the covenants hereinbefore contained on the part of the said A. B., shall not be considered a breach of trust, and that the said trustees or trustee shall not be in anywise responsible for such neglect, nor for the said policy becoming void by any means whatsoever.

Trustees' receipt clause.

AND IT IS HEREBY DECLARED, that the receipts or receipt in writing of the said trustees or trustee, for any monies, stocks, funds, shares, or securities which may be paid or transferred to them or him in pursuance of these presents, or the trusts thereof, shall effectually discharge the person or persons paying or transferring the same therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof (*a*).

Power to trustees to compromise and arrange.

AND IT IS HEREBY DECLARED, that the said trustees or trustee may compromise or refer to arbitration any action, suit, dispute, or demand, and may arrange any question of law or equity, and abandon or submit to any claim, as their or his counsel shall advise, and may settle and approve all accounts, and decide whether any monies shall be considered income or capital for the purposes of these presents, and generally may act in relation to the said trust premises as absolutely as if they or he were or was the abso-

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(*a*) If the policy is not effected in the names of the trustees, but is assigned to them, the receipt clause should expressly point to the monies assured by the policy and the assurance company. See supra, p. 175.

lute owners or owner thereof. [*Trustee clauses, supra, pp.* 215, 216.] IN WITNESS &c.

XXXVI.

SETTLEMENT *on* MARRIAGE *of a Sum of* STOCK *for the* HUSBAND *and* WIFE *only, without Provision for Children.*

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*intended husband*], of the one part; C. D., of &c. [*intended wife*], of the second part; and E. F., of &c., G. H., of &c., and I. K., of &c. [*trustees*], of the third part, WITNESSETH, &c. [*declaration of trust for the wife till marriage; power to vary investments; trust for the wife's separate use for the joint lives, as in Precedent XXXIV, supra, pp.* 211, 212]. AND IT IS HEREBY DECLARED, that, if the said A. B. shall die in the lifetime of the said C. D., then, after his death, the said trustees or trustee shall hold the said trust premises, and the annual income thereof, in trust for the said C. D.; BUT IF the said C. D. shall die in the lifetime of the said A. B., then, during his life, shall pay the annual income of the said trust premises to the said A. B. and his assigns, and, after his death, shall hold the said trust premises, and the annual income thereof, upon and for such trusts, intents, and purposes as the said C. D. shall, notwith-

Parties.

Witnesseth.

Declaration of trust after the death of either the husband or wife.

standing her coverture, by will or codicil appoint; AND, in default of such appointment, and so far as no such appointment shall extend, in trust for such persons or person as, under the statutes for the distribution of the effects of intestates, would have become entitled thereto at the death of the said C. D., if the said A. B. were then dead, and she had died possessed thereof intestate (*a*), such persons, if more than one, to take as tenants in common in the shares in which they would have been entitled under the same statutes. [*Usual trustee clauses, supra, pp.* 215, 216.] IN WITNESS &c.

(*a*) The expression in a settlement containing previous provisions for children is, "intestate and unmarried;" but, in a settlement which contains no provisions for children, the word "unmarried" would exclude the children, and give the property to other relations. Hence, in this case, the fund is given to those who would be entitled if she survived her husband and died intestate, i. e. the children, if any, and then the other relations.

XXXVII.

SETTLEMENT *on* MARRIAGE *of* REAL ESTATE (FREEHOLD *and* COPYHOLD) *upon the* HUSBAND *and* WIFE *successively for Life, with* REMAINDER *to the* CHILDREN *of the Marriage, as the Husband and Wife, or the Survivor, shall* APPOINT; *and, in Default, in equal Shares in* TAIL *as* TENANTS IN COMMON, *with* CROSS REMAINDERS. POWERS *of* MANAGEMENT *during* MINORITIES, *of* LEASING, *and of* SALE *and* EXCHANGE (*a*).

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*intended husband*], of the first part; C. D., of &c. [*intended wife*], of the second part; and Parties.

(*a*) When real estate is desired to be settled upon the children as the parents shall appoint, and, in default, equally, the best way is to convey the estate to the trustees, upon trust to sell and hold the money produced upon trusts to be declared by a settlement of even date. (See the next two Precedents, infra, pp. 236, 239). For when real estate is settled as in the Precedent in the text, the ordinary provisions for hotchpot and advancement cannot be applied, nor those for maintenance and accumulation conveniently. And it is evident that the effect of a settlement in trust for sale, (such sale, during the lives of the tenants for life, to be

E. F., of &c., and G. H., of &c. [*trustees*], of the third part, WITNESSETH, that, in consideration of a marriage intended to be shortly solemnised be-

Witnesseth.

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with their consent), and a declaration that the rents till a sale shall go as the income of the funds would go, is tantamount to the settlement of the real estate in specie, with the ordinary power of sale. The Precedent in the text, however, is given principally to afford an example of a settlement in pursuance of the new act, with the omission of the limitations to the trustees to preserve contingent remainders, and partly, also, because a settlement of this kind is sometimes insisted on. And, as a settlement among the children equally is almost invariably required for small, and not for large, properties, it appeared to be more appropriate in this collection of concise Precedents than a strict settlement, with powers of jointuring and charging portions, and the like. To render these latter settlements really effective and useful, they must necessarily be made of considerable length, and, as they generally comprise considerable properties, their bulk is the less material. Doubtless, the ordinary *language* of the provisions in great settlements may be considerably abridged; but the tendency of the present day is to multiply the provisions themselves to meet the various new difficulties in the working of them which daily occur. The Precedent in the text may, however, readily be converted into a simple strict settlement, by changing the limitation to the children equally into a limitation to the first and other sons successively in tail, with remainder to the first and other daughters successively in tail; the preceding power of appointment being either omitted or retained. The language of the powers will require to be altered, by restraining their exercise after the death of the tenants for life to the minority of a child entitled under the limitations or appointments. See the Precedent of a strict settlement in a will, infra.

tween the said A. B. and C. D., he the said A. B., with the approbation of the said C. D., doth hereby grant unto the said E. F. and G. H. and their heirs, [*parcels in the first schedule—general words, supra, p.* 97], TO HOLD the said premises UNTO the said E. F. and G. H. and their heirs, TO THE USE of the said A. B. and his heirs until the said intended marriage; AND AFTER the solemnisation thereof, TO THE USE of the said A. B. and his assigns, during his life, without impeachment of waste; AND AFTER his death TO THE USE of the said C. D. and her assigns, during her life, without impeachment of waste; AND AFTER the death of the said C. D., TO THE USE of the child, or all or such one or more of the children, of the said intended marriage, for such estates or estate, and in such manner and form, in every respect, as the said A. B. and C. D. shall, by any deed or deeds, appoint. AND, IN DEFAULT of and until such appointment, and so far as no such appointment shall extend, as the survivor of the said A. B. and C. D. shall, by any deed or deeds, or by will or codicil, appoint. AND, IN DEFAULT of and until such appointment, and so far as no such appointment shall extend, IF there shall be only one child of the said intended marriage, TO THE USE of such only child, and the heirs of his or her body; BUT IF there shall be more than one child of the said intended marriage, then TO THE USE of all the children of the said intended marriage, and the heirs of their respective bodies, in

Conveyance of freeholds.

Habendum.

To the use of settlor till marriage; after marriage, to uses in favour of the husband, wife, and children;

equal shares, as tenants in common; AND if any one or more of the said children shall die without issue, then, as well as to the original share or shares of the child or children so dying, as to the share or shares that shall have survived or accrued to such child or children, or to the heirs of his, her, or their body or respective bodies, TO THE USE of the others or other of the said children, and the heirs of their, his, or her respective bodies or body; and, if more than one, in equal shares. AND, FOR DEFAULT of such issue, TO THE USE of the said A. B., his heirs and assigns, for ever. AND IT IS HEREBY DECLARED, that, after the death of the said A. B. and C. D., so long as any child of the said intended marriage shall be under the age of twenty-one years, the said E. F. and G. H., or the survivor of them, or the executors or administrators of such survivor, shall receive the rents and profits of and manage the said premises, with power to fell timber for repairs, or sale, or otherwise, and to accept surrenders from, and make allowances to, and arrangements with, tenants and others, and with all other powers expedient for the due management thereof; AND, after deducting the expenses of management, repairs, insurance, and other outgoings [*If there be or can be any charge on the premises, add,* "and keeping down any annual sum or sums, and the interest on any principal sum or sums charged on the premises"], shall pay to such of the children of the said intended marriage as shall for the time being have

and, for default of issue, to the husband in fee.

Provision for the application of the rents and profits during the minorities of the children.

attained the age of twenty-one years, his, her, or their share or respective shares of the said net rents and profits; AND shall, out of the share thereof of every or any of the said children who shall for the time being be under the age of twenty-one years, pay the whole, or such sum or sums as the said trustees or trustee shall think proper, for or towards the maintenance or education of every such minor, (either directly, or by payment to his or her guardian or guardians, to be applied by such guardian or guardians without accounting to the said trustees or trustee), AND shall accumulate the residue (if any) of every or any such share of the said rents and profits, in the way of compound interest, by investing the same, and all the resulting income thereof, in their or his names or name, in or upon any of the public stocks or funds of Great Britain or upon Government or real securities in England, Wales, or Ireland, with power to resort to such accumulations respectively at any time or times during the minority of the child from whose share the same respectively shall have arisen, for the maintenance or education of such child; AND, subject and without prejudice to the provision for resorting to the said accumulations for maintenance and education as aforesaid, shall hold all the said residue of every or any such share of the said rents and profits, and the stocks, funds, and securities in or upon which the same may be invested, upon such trusts as the same would be held upon if the same were monies arising from

sales under the power of sale hereinafter contained, or stocks, funds, or securities purchased therewith: PROVIDED ALWAYS, that it shall be lawful for the said A. B. during his life, and, after his death, for the said C. D. during her life, and, after the death of the said A. B. and C. D., for the said E. F. and G. H., and the survivor of them, and the executors and administrators of such survivor, during the minority of any child of the said intended marriage, at any time or times, to appoint, by way of lease, all or any of the said hereditaments and premises for any term of years absolute, not exceeding twenty-one years, to take effect in possession, so as there be reserved thereon the best yearly rent or rents to be incident to the immediate reversion that can be reasonably gotten, without taking any fine, premium, or foregift, or anything in the nature thereof, and so as there be contained in every such appointment a condition of re-entry for non-payment, within a reasonable time to be therein specified, of the rent or rents thereby reserved, and so as the appointee or appointees do execute a counterpart thereof, and be not made dispunishable for waste (*a*): PROVIDED ALSO, that it shall be lawful for the said

Power of leasing.

Power of sale and exchange.

(*a*) The above is the ordinary power to lease for twenty-one years either houses or lands. But if the property contains stone or minerals, there should be a power to grant mining leases; and if it comprise land likely to be required for building, or houses likely to require repairs, there should be a power to grant leases for building and repairing pur-

E. F. and G. H., and the survivor of them, and the executors or administrators of such survivor, (hereinafter called the trustees or trustee), at any time or times during the life of the said A. B., with his consent in writing, and, after his death, during the life of the said C. D., with her consent in writing, and, after the death of the said A. B. and C. D., during the minority of any child of the said intended marriage, at the discretion of them the said trustees or trustee, (but subject to any lease which may have been granted under the power hereinbefore contained), to dispose of, either by way of sale, or in exchange for other hereditaments in England or Wales, all or any of the said hereditaments and premises upon such terms and under such conditions as the said trustees or trustee shall think fit, with power to buy in or rescind any contract for sale or exchange of all or any of the said premises, and to re-sell or exchange the same without being responsible for any loss which may be occasioned thereby, and to revoke the uses, trusts, and powers then subsisting in or of the hereditaments so sold or disposed of in exchange, and appoint the same to such uses and in such manner as shall be expedient to effectuate such sale or exchange. AND IT IS HEREBY DECLARED, that the receipt of the said trustees or trustee for any monies paid to them or him upon any sale, or for

Trustees' receipt clause.

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poses. (See the forms of such powers, Davidson's Common Forms in Conveyancing, pp. 166, 167).

equality of exchange, under the power of sale and exchange hereinbefore contained, shall effectually discharge the persons paying the same therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof. AND IT IS HEREBY DECLARED, that the said trustees or trustee shall, with such consent, or at such discretion as aforesaid, lay out the money received upon any sale or for equality of exchange (*a*), in the purchase of freehold or copyhold hereditaments of inheritance (*b*) in England or Wales, and shall settle, or cause the same to be settled, to the uses, upon the trusts, and subject to the powers hereby limited, as far as the deaths of parties and other intervening circumstances will permit. AND IT IS HEREBY FURTHER DECLARED, that, until the money to be received upon any sale, or for equality of exchange, shall be laid out as aforesaid, the

Monies arising under the power of sale and exchange to be laid out in the purchase of lands, to be settled to the uses of the settlement;

and, till a purchase, to be invested in the funds or upon securities.

(*a*) It is usual to provide that the trustees of the power of sale and exchange may pay or receive money for equality of exchange; but, as the power so to pay or receive is incident to the power of exchange, (*Bartram* v. *Whichcote*, 6 Sim. 86), the provision is unnecessary. Money to be so paid by the trustees may be paid by them out of any monies received by them under their power, (Ib.); but a power is often added (where conciseness is not an object) to enable them to raise money for the purpose by mortgage.

(*b*) It is convenient to extend the power of purchase to copyholds for lives, and leaseholds for lives and years; but, as this requires considerable additional trusts for renewal and settlement, it is better omitted when brevity is desired.

said trustees or trustee may, with such consent or at such discretion as aforesaid, invest the same, in their or his names or name, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, and vary the same, if and as they or he shall think fit; AND THAT the annual income from such stocks, funds, and securities shall be paid and applied to such person or persons, for such purposes and in such manner as the rents and profits of the hereditaments to be purchased therewith as aforesaid would be payable or applicable, in case such purchase and settlement as aforesaid were then actually made (*a*). AND THIS INDENTURE ALSO WITNESSETH, that, for the consideration aforesaid, he the said A. B., with the approbation of the said C. D., doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said E. F. and G. H., and their heirs, that, in case the said intended marriage

Witnesseth.

Covenant to surrender copyholds.

(*a*) It must be understood, that the above power of sale and exchange is applicable only to small estates, and to simple settlements. If the estate is, or under powers of charging may become, subject to incumbrances, there must be provisions for allowing money arising from sales to be applied in discharge of incumbrances. (See infra, p. 265). There must also be provisions for purchasing and selling lands of all tenures, (supra, p. 232, n. (*b*)), and a provision that the power shall over-reach all charges to be created under the powers or terms of years, except sales or mortgages actually made. See the form of a complete power, Davidson's Common Forms in Conveyancing, p. 172.

shall be solemnised, he the said A. B., or his heirs, will, at the next or some subsequent court held for the manor of ——, in the county of ——, at his or their own cost, surrender into the hands of the lord of the same manor, according to the custom thereof, ALL THOSE &c. [*parcels in the second schedule—general words, supra, pp.* 97, 117],

To the use of the trustees, upon trusts to correspond with the uses of the freeholds.

TO THE USE of the said E. F. and G. H., their heirs and assigns, according to the custom of the same manor, by and under the accustomed rents, fines, suits, and services, and upon such trusts, and subject to such powers, as shall as nearly correspond with the uses, trusts, and powers hereinbefore limited and contained of the said premises hereinbefore granted, as the different qualities of the estates and the rules of law and equity will permit. [*Trustee clauses, supra, p.* 216]. AND THE SAID A. B. doth hereby, for himself, his heirs, executors, and administrators, COVENANT with the said E. F. and G. H., their heirs and assigns, that, notwithstanding any act, deed, or thing by him the said A. B., or any of his ancestors, made or done, or knowingly suffered, he the said A. B. now hath power to grant and settle the said premises hereinbefore expressed to be granted, to the uses and in manner aforesaid, free from incumbrances, and to surrender the said premises hereinbefore covenanted to be surrendered to the use of the said E. F. and G. H., their heirs and assigns, upon the trusts and in manner aforesaid, free from incumbrances. AND THAT he the said

Covenants for right to convey and surrender, free from incumbrances;

and for fur-

A. B. and his heirs, and all persons lawfully or equitably claiming any estate or interest in the premises through or in trust for him or any of his ancestors, will, at all times at the request of the said trustees or trustee, or any person interested in the premises, and at the cost of the trust estate, do and execute all such acts and assurances for further or better assuring the said premises respectively to the several uses and in manner aforesaid, as by the said trustees or trustee, or any person interested in the premises, shall be reasonably required. IN WITNESS &c. ther assurance.

THE FIRST SCHEDULE to which the above-written INDENTURE refers.

THE SECOND SCHEDULE to which the above-written INDENTURE refers.

XXXVIII.

Conveyance, *in contemplation of* Marriage, *of a* Freehold Estate in Trust *for* Sale, *with a* Declaration *of* Trust *of the* Purchase-Money *by reference to a* Settlement *of* even Date (*a*).

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*intended husband*], of the first part; C. D., of &c. [*intended wife*], of the second part; and E. F., of &c., G. H., of &c., and I. K., of &c. Witnesseth. [*trustees*], of the third part, WITNESSETH, that, Conveyance to trustees. in consideration of a marriage intended to be shortly solemnised between the said A. B. and C. D., he the said A. B., with the consent of the said C. D., doth hereby grant unto the said E. F., G. H., and I. K., their heirs and assigns, ALL THOSE &c. [*parcels* (*b*)—*general words* Habendum. *and estate clause, supra, p.* 96], TO HOLD the said premises UNTO the said E. F., G. H., and

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(*a*) See supra, p. 225, n. (*a*), with reference to this form of settlement.

(*b*) It has hitherto been seldom possible to procure a schedule of parcels for a marriage settlement; but when attainable, a schedule is as convenient for a settlement as for a conveyance. See supra, p. 6.

I. K., their heirs and assigns, TO THE USE of the said E. F., G. H., and I. K., their heirs and assigns, IN TRUST for the said A. B., his heirs and assigns, until the said intended marriage; AND AFTER the solemnisation thereof, UPON TRUST that the said E. F., G. H., and I. K., and the survivors or survivor of them, and the heirs of such survivor, shall with the consent of the said A. B. and C. D. during their joint lives, and of the survivor of them during his or her life, and, after the death of such survivor, at the discretion of the said trustees or trustee for the time being, sell the said premises, either together or in parcels, and either by public auction or private contract, with full power to buy in or to rescind any contract for sale, and to re-sell, without being responsible for any loss which may be occasioned thereby, and to do and execute all such agreements, acts, deeds, and assurances for effectuating any such sale as they or he shall think fit. AND IT IS HEREBY DECLARED, that the receipt of the said trustees or trustee for the purchase-monies of the premises sold, or any part thereof, shall effectually discharge the purchaser or purchasers therefrom, and from being concerned to see to the application thereof, or being accountable for the non-application or misapplication thereof. AND IT IS HEREBY DECLARED, that the said trustees or trustee shall hold the monies to arise from any such sale (after payment thereout of all expenses) upon such trusts, and sub-

In trust for the husband till marriage; and after marriage, in trust for sale.

Trustees' receipt clause.

Trusts of the monies to arise from the sale.

ject to such powers, as are or shall be declared of the same in a deed already ingrossed, and intended to bear even date with these presents, and to be made, or expressed to be made, between the same persons as are parties to these presents.

Power of leasing for twenty-one years.

AND IT IS HEREBY DECLARED, that it shall be lawful for the said trustees or trustee, at any time or times before all the said premises shall have been sold, to demise all or any of the same premises for any term of years absolute, not exceeding twenty-one years, to take effect in possession, so as there be reserved thereon the best yearly rent or rents to be incident to the immediate reversion that can be reasonably gotten, without taking any fine, premium, or foregift, or anything in the nature thereof, and so as there be contained in every such demise a condition of re-entry for non-payment, within a reasonable time to be therein specified, of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and be not made dispunishable for waste.

Income of the estate, until a sale.

AND IT IS HEREBY DECLARED, that, until all the said premises shall be sold, the said trustees or trustee for the time being shall hold the income thereof, (after payment thereout of all rates, taxes, expenses of repairs and insurance, and other outgoings), upon such trusts, and subject to such powers, as are or shall be declared thereof by the said intended deed of even date with these presents. [*Covenants by A. B. for right to convey free from incumbrances, and for further*

assurance, supra, pp. 97, 98. *Power to appoint new trustees, supra, p.* 215.] IN WITNESS &c.

THE SCHEDULE to which the above-written INDENTURE refers.

XXXIX.

SETTLEMENT *on* MARRIAGE *of* MONEY *to arise from* REAL ESTATE *conveyed to* TRUSTEES *by a* DEED *of* EVEN DATE *in* TRUST *for* SALE (*a*).

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*intended husband*], of the first part; C. D., of &c. [*intended wife*], of the second part; and E. F., of &c., G. H., of &c., and I. K., of &c. [*trustees*], of the third part. WHEREAS a marriage is intended to be shortly solemnised between the said A. B. and C. D. AND WHEREAS, by an indenture bearing even date with, but executed before, these presents, and expressed to be made between [*parties*], certain hereditaments in the parish of ——, in the county of ——, have been conveyed to the use of the said E. F., G. H., and I. K., their heirs and assigns, in trust for the said A. B., his heirs and assigns, until the said in-

Parties.

Recital of intended marriage;

—of the conveyance of real estate by a deed of even date to trustees, in trust to sell, and hold the purchase-money on the trusts of the present deed.

(*a*) The deed referred to is the last Precedent.

tended marriage, and, after the solemnisation thereof, upon trust for sale; and it is thereby declared, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall hold the net monies to arise from such sale, and the net rents and profits, until sale of the said hereditaments, or of the unsold part thereof, upon the trusts to be declared thereof respectively by these presents. NOW THIS INDENTURE WITNESSETH, and it is hereby declared, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall hold the net monies to arise from any and every sale under the hereinbefore-recited indenture, UPON TRUST, that they or he shall, with the consent in writing of the said A. B. and C. D. during their joint lives, and of the survivor during his or her life, and, after the death of such survivor, at the discretion of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, (hereinafter called the said trustees or trustee), invest the said monies, in the names or name of the said trustees or trustee, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, [or in or upon the shares, stock, or securities of any company in England or Wales incorporated by act of Parliament, and paying a

Witnesseth.

Declaration of trust of the monies to arise from a sale.

dividend], with power for the said trustees or trustee, if and when they or he shall think fit, with such consent or at such discretion as aforesaid, to vary the said stocks, funds, shares, or securities. AND IT IS HEREBY DECLARED, that the said trustees or trustee shall pay the annual income &c. [*trusts for wife, husband, and children, and in default of children, ut supra, pp.* 212—215]. AND IT IS HEREBY DECLARED, that, until all the said hereditaments shall be sold, the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators of such survivor, shall pay and apply the net rents and profits of the said hereditaments, or of the unsold part thereof for the time being, to the person or persons, for the purposes and in the manner, to whom, and for and in which, the annual income of the stocks, funds, shares, and securities aforesaid would be payable and applicable, if such hereditaments had then been sold, and the net monies arising from such sale had been invested as aforesaid. [*Trustee clauses, supra, pp.* 215, 216.] IN WITNESS &c.

Declaration of trust of the funds to be purchased with the monies.

Declaration of trust of the rents and profits till sale.

XL.

VOLUNTARY SETTLEMENT *of* REAL *and* PERSONAL ESTATE, *for the Benefit of the* SETTLOR, *his* WIFE, CHILDREN, *and* GRANDCHILDREN. POWER *of* REVOCATION.

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*settlor*], of the one part, and C. D., of &c., and E. F., of &c. [*trustees*], of the other part,

Witnesseth. WITNESSETH, that, in consideration of the natural

Conveyance. love and affection of the said A. B. for his wife, children, and issue hereinafter named, and for divers other good considerations, the said A. B. doth hereby grant unto the said C. D. and E. F., and their heirs, [*parcels—general words—estate clause, supra, p.* 96],

Habendum. TO HOLD the said premises unto

To the use of the settlor for life. the said C. D. and E. F., and their heirs, TO THE USE of the said A. B. and his assigns, during his

Remainder to his wife for life. life, without impeachment of waste; AND after his death, TO THE USE of G. B. his wife, and her assigns, during her life, without impeachment of

Remainder to trustees, waste, except wilful waste; AND after the death of the said G. B., TO THE USE of the said C. D.

upon trust to sell, and E. F., their heirs and assigns, UPON TRUST that the said C. D. and E. F., or the survivor of them, or the heirs of such survivor, (hereinafter called the trustees or trustee), shall sell the said premises, either together or in parcels, and either

by public auction or private contract, with full power to buy in or rescind any contract for sale, and to re-sell, without being responsible for any loss occasioned thereby, and to make, do, and execute all such agreements, acts, deeds, conveyances, and assurances for effectuating any such sale, as they or he shall think fit; AND SHALL hold the monies to arise from every such sale (after payment thereout of all expenses) upon the trusts following; (that is to say), AS TO three-sixth parts thereof, UPON TRUST to pay the same equally among such of the children hereinafter named of the said A. B., viz. H. B., J. B., and K. B., as shall be living at the death of the survivor of the said A. B. and G. B., or shall be then dead leaving issue then living, the share or shares of such of them as shall be then dead leaving issue then living to be paid to his, her, or their respective executors or administrators, as part of his, her, or their respective personal estate; AND AS TO one other sixth part thereof, UPON TRUST to invest the same in the names or name of the said trustees or trustee, in any of the public stocks or funds of Great Britain, and to accumulate the income thereof in the way of compound interest, by similarly investing the same and the resulting income thereof, until the same shall become payable as hereinafter mentioned; (that is to say), if L. B., the son of the said A. B., or any issue of the said L. B., (he being then dead), shall claim within fifteen years from the date of these pre-

and hold the monies produced

upon trust,

as to three-sixths, for certain children of the settlor;

—as to one-sixth, to invest and accumulate,

until claimed by one of the settlor's sons or his issue within fifteen years;

sents, then to pay or transfer the same, and the accumulations thereof, to the said L. B., or (he being dead) to his issue then living, such issue, if more than one, to take in equal shares, per stirpes; but if the said L. B., or any issue of the said L. B., shall not claim within such fifteen years, or if, before the expiration thereof, it shall be ascertained that the said L. B. is dead, and that no issue of the said L. B. is then living, then, immediately upon the expiration of the said fifteen years, or upon the death of the said L. B., the failure of his issue being so ascertained, whichever shall first happen, the said trustees or trustee shall hold the said last-mentioned sixth part of the said net purchase-monies, and the accumulations thereof, upon the trusts hereinbefore declared of the first-mentioned three sixth parts; AND AS TO the remaining two sixth parts of the said net purchase-monies, UPON TRUST to pay the same equally among such of the persons hereinafter named, viz. M. H., O. H., and P. H., the children of R. H., deceased, who was a daughter of the said A. B., as shall be living at the death of the survivor of the said A. B. and G. B., and shall attain the age of twenty-one years, or shall be then dead leaving issue then living, the share or shares of such of them as shall be then dead leaving issue then living to be paid to his, her, or their respective executors or administrators, as part of his, her, or their respective personal estate. AND IT IS HEREBY DECLARED, that it shall be lawful for the said A. B. during his life,

—as to remaining two-sixths, to divide amongst the settlor's grandchildren.

Power to lease for twenty-one years.

and after his death for the said G. B. during her life, and after the death of the said G. B. for the said trustees or trustee, at any time or times before all the said premises shall have been sold, to appoint by way of demise, or to demise, all or any of the same premises for any term of years absolute, not exceeding twenty-one years, to take effect in possession, so as there be reserved thereon the best yearly rent or rents, to be incident to the immediate reversion, that can be reasonably gotten, without taking anything in the nature of a fine, premium, or foregift, and so as there be contained in every such appointment or demise a condition of re-entry for non-payment within a reasonable time, to be therein specified, of the rent or rents thereby reserved, and so as the appointee or appointees, lessee or lessees, do execute a counterpart thereof, and be not made dispunishable for waste. AND IT IS HEREBY DECLARED, that the said trustees or trustee may invest the presumptive or expectant share of every or any person for the time being entitled presumptively or in expectancy under the trusts aforesaid in any of the public stocks or funds of Great Britain, and may vary such investments as and when they or he shall think fit, and may accumulate the income or any part of the income thereof, in the way of compound interest, by similarly investing the same and the resulting income thereof; AND MAY, at their or his absolute discretion, pay or apply the whole or any part of the principal or income, or

Power to trustees to accumulate,

and to apply principal or income for maintenance, education, or benefit.

accumulations of income, of any such presumptive or expectant share, for or towards the maintenance, education, or benefit of the person for the time being entitled thereto presumptively or in expectancy, as aforesaid. AND IT IS HEREBY DECLARED, that, until all the said premises shall be sold, the said trustees or trustee shall pay and apply the net income thereof, or of the unsold part thereof, (after payment thereout of all taxes, rates, expenses of repairs and insurance, and other outgoings), to the person or persons, for the purposes and in the manner, to whom, and for and in which, the net monies produced by the sale thereof, or the stocks or funds in or upon which any share or shares thereof are hereinbefore directed or authorised to be invested, or the income thereof, would have been payable or applicable, if such premises had been sold and such investments made. AND THIS INDENTURE ALSO WITNESSETH, that, in consideration of the natural love and affection of the said A. B. for his said wife, and for his daughters hereinafter named, he the said A. B. doth hereby assign unto the said C. D. and E. F., their executors, administrators, and assigns, ALL AND SINGULAR his pictures, prints, books, plate, plated goods, linen, china, household goods, furniture, chattels, and effects, (other than money or securities for money), TO HOLD the same unto the said C. D. and E. F., their executors, administrators, and assigns, UPON TRUST to permit the said A. B. during his life, and after his death the said G. B.

Declaration of trust of rents and profits till a sale.

Witnesseth.

Assignment of chattels to the trustees.

Habendum upon certain trusts.

during her life, to use the same; and after the death of the survivor of the said A. B. and G. B., UPON TRUST to divide the same equally between the said H. B. and K. B., their executors, administrators, or assigns. AND IT IS HEREBY DECLARED, that the receipts or receipt in writing of the said trustees or trustee for the purchase-money of premises sold, or for any monies, funds, shares, or securities which may be paid or transferred to them or him in pursuance of these presents, or the trusts thereof, shall effectually discharge the purchaser or purchasers, or other person or persons paying or transferring the same, therefrom, and from being concerned to see to the application, or being answerable for the misapplication or non-application thereof. [*Power to appoint new trustees—trustees' indemnity clause, supra, pp.* 215, 216.] AND IT IS HEREBY DECLARED, that it shall be lawful for the said A. B., at any time or times, by deed, or will, or codicil, absolutely to revoke, determine, and make void all or any of the uses, trusts, and estates hereinbefore expressed to be limited and declared, and, by the same or any other deed, or by will or codicil, to limit and declare such other uses, trusts, and estates, of or concerning the said hereditaments and premises hereinbefore expressed to be granted, as he shall think fit. IN WITNESS &c.

Trustees' receipt clause.

Power of revocation.

THE SCHEDULE to which the above-written INDENTURE refers.

Wills.

XLI.

Will *of* Real *and* Personal Estate, *for the Benefit of the Testator's* Wife *and* Children.

Gift to wife of household goods and furniture,

I, A. B., of &c., DECLARE this to be my last will and testament. I BEQUEATH to my wife C. B. all the pictures, prints, books, plate, linen, china, wines, liquors, provisions, household goods, furniture, horses, carriages, chattels and effects, (other than money or securities for money), which shall at my death be in or about my dwelling-house, or the outbuildings or grounds thereof.

and of a pecuniary legacy.

I BEQUEATH to my said wife the sum of £——, to be paid to her within one calendar month after my death, without interest.

General devise of real estate,

I DEVISE all my real estate (except what I otherwise devise by this my will, and except estates vested in me upon trust) unto E. F., of &c., G. H., of &c., and I. K., of &c., their heirs, executors, and administrators, respectively, according to the nature and tenure thereof,

In trust for sale.

UPON TRUST that the said E. F., G. H., and I. K., or the sur-

vivors or survivor of them, or the heirs, executors, and administrators respectively of such survivor, shall, as soon as conveniently may be, sell the same, either together or in parcels, and either by public auction or private contract, with full power to buy in and to rescind any contract for sale, and to re-sell, without being responsible for any loss occasioned thereby, and to do and execute all such acts and assurances for effectuating any such sale as they or he shall think fit. I BEQUEATH all my personal estate (except chattels real, included in the general devise hereinbefore contained of real estate, and except what I otherwise bequeath by this my will) unto the said E. F., G. H., and I. K., their executors and administrators, UPON TRUST that the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, shall, as soon as conveniently may be, call in, sell, and convert into money such part of my said personal estate as shall not consist of money. AND I DECLARE, that the said E. F., G. H., and I. K., and the survivors and survivor of them, and the heirs, executors, and administrators respectively of such survivor, shall, by and out of the monies to arise from the sale of my said real estate, and from the calling in, sale, and conversion into money of such part of my said personal estate as shall not consist of money, and the money of which I shall be possessed at my death, PAY my funeral and testamentary expenses and debts, and the legacies bequeathed by this my will,

General bequest of personalty,

in trust for sale and conversion into money.

Declaration of the trusts of the money produced by the real and personal estate;

to pay funeral and testamentary ex-

penses, debts, and legacies, and to invest the residue;

or any codicil hereto; AND SHALL invest the residue of the said monies, in the names or name of the said E. F., G. H., and I. K., or the survivors or survivor of them, or the executors or administrators of such survivor, (hereinafter called the trustees or trustee), in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, [or in or upon the shares, stock, or securities of any company incorporated by act of Parliament, and paying a dividend,] with power for the said trustees or trustee to vary the said stocks, funds, shares, and securities, at their or his discretion. AND I DECLARE, that the said trustees or trustee shall pay the annual income of the said trust funds to my said wife so long as she shall continue my widow; AND AFTER her death or marriage, shall hold the said monies, stocks, funds, and securities, and the annual income thereof, upon trust for all or any such one or more of my children, and in such manner and form in every respect, as my said wife shall, so long as she shall remain unmarried, by any deed or deeds, or by will or codicil, appoint; AND IN DEFAULT of any such appointment, and so far as no such appointment shall extend, in trust for all my children, or any my child, who, being sons or a son, shall attain twenty-one years, or, being daughters or a daughter, shall attain that age or marry, and, if more than one, in equal shares: PROVIDED ALWAYS, that no child taking any part of the said premises under any such ap-

with power to vary the investments;

In trust to pay the income to testator's wife for life or widowhood;

and afterwards to hold the funds in trust for testator's children, as his wife shall appoint;

and, in default of appointment, in trust for all testator's children, who, being sons, attain twenty-one, or, being daughters, attain that age or marry.

Hotchpot clause.

pointment as aforesaid shall, in default of appointment to the contrary, be entitled to any share of that part of the said premises of which no such appointment shall be made, without bringing his or her appointed share into hotchpot; PROVIDED ALSO, that the said trustees or trustee may, after the death or marriage of my said wife, which shall first happen, or previously thereto if she shall so direct in writing, raise any part or parts of the then expectant presumptive, or vested share or fortune of any child under the trusts hereinbefore declared, not exceeding in the whole for any such child one half part of his or her then expectant, presumptive, or vested share or fortune, and apply the same for his or her advancement or benefit. AND I HEREBY DECLARE, that the said trustees or trustee shall, after the death or second marriage of my wife, which shall first happen, apply the whole, or such part as they or he shall think fit, of the annual income of the share or fortune to which any child shall, for the time being, be entitled in expectancy under the trusts hereinbefore declared, for or towards the maintenance or education of such child, either directly, or to his or her guardians or guardian, without seeing to the application thereof, or requiring any account of the same (*a*); AND SHALL, during such suspense of absolute vesting, accumulate the residue

Advancement clause.

Maintenance clause.

Accumulation clause.

(*a*) The last part of this provision is, of course, inapplicable when the trustees are appointed guardians.

(if any) thereof in the way of compound interest, by investing the same, and the resulting income thereof, from time to time, in or upon any such stocks, funds, shares, or securities as are hereinbefore mentioned, for the benefit of the person or persons, who, under the trusts herein contained, shall become entitled to the principal fund from which the same respectively shall have proceeded, with power for the said trustees or trustee to resort to the accumulation of any preceding year or years, and apply the same for or towards the maintenance or education of the child or children who shall, for the time being, be presumptively entitled to the same respectively. AND, if there shall be no child of mine living at my death, who, being a son, shall attain the age of twenty-one years, or, being a daughter, shall attain that age or marry, then, from and after the death or marriage of my said wife, and such default or failure of children, I BEQUEATH the said monies, stocks, funds, shares, and securities, or so much thereof as shall not have become vested or been applied under the trusts aforesaid, unto &c. (*a*). AND I HEREBY DECLARE, that it shall be lawful for the said trustees or trustee, at any time or times before all my said real estate shall have been sold, to demise all or any part thereof for any term of years absolute, not exceeding twenty-one years, to take

Disposition in default of children entitled under the preceding trusts.

Power of leasing for twenty-one years.

(*a*) If the testator's children are numerous, the bequest in default of children will probably be omitted.

effect in possession, so as there be reserved on every such demise the best yearly rent or rents, to be incident to the immediate reversion, that can be reasonably gotten, without taking any fine, premium, or foregift, or anything in the nature thereof, and so as there be contained in every such demise a condition of re-entry for non-payment within a reasonable time, to be therein specified, of the rent or rents thereby reserved, and so as the lessee or lessees do execute a counterpart thereof, and be not made dispunishable for waste.

Income of the real and personal estate, until a sale and conversion, to go as the income of the investments of the money to arise from sale and conversion.

AND I FURTHER DECLARE, that, until all my said real and personal estate shall be sold and converted into money, the said trustees or trustee shall apply the income of such part thereof as shall, for the time being, remain unsold or unconverted, after payment thereout of all rates, taxes, expenses of repairs, insurance, and other outgoings, to the person or persons, for the purposes, and in the manner, to whom, and for and in which, the annual income of the stocks, funds, shares, or securities aforesaid would be payable and applicable if such real and personal estate had then been sold, and the net surplus monies arising from such sale had been invested as aforesaid.

Devise of mortgage estates.

I DEVISE all the freehold and copyhold hereditaments vested in me upon mortgage unto the said E. F., G. H., and I. K., their heirs and assigns, subject to the equity of redemption subsisting therein respectively; but the money secured on such mortgages shall be considered as part of my personal

Appointment of guardians;

estate (*a*). I APPOINT my said wife, and the said E. F., G. H., and I. K., guardians of my infant children.

—of executors, with power to arrange and compromise.

AND I APPOINT the said E. F., G. H., and I. K. executors of this my will, and authorise the acting executors or executor for the time being of this my will to satisfy any debts claimed to be owing by me or my estate, and any liabilities to which I or my estate may be alleged to be subject, upon any evidence they or he shall think proper, and to accept any composition or security for any debt, and to allow such time for payment (either with or without taking security) as to the said acting executors or executor shall seem fit, and also to compromise or submit to arbitration and settle all accounts and matters belonging or relating to my estate, and, generally, to act in regard thereto as they or he shall think expedient, without being responsible for any loss thereby occasioned.

Trustees' receipt clause.

AND I HEREBY DECLARE, that the receipts or receipt in writing of the trustees or trustee for the time being, acting in the execution

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(*a*) It has been suggested of late that trust estates ought not to be devised, as they usually have been. (See 5 Martin's Conveyancing, 13; *Cooke* v. *Crawford*, 13 Sim. 91. See, however, *Titley* v. *Wolstenholme*, 7 Bea. 426; *Midland Counties Railway* v. *Westcomb*, 11 Sim. 57; 2 Jarm. on Wills, 714.) If trust estates are not to be devised, they had better be expressly excepted from the general devise of real estate. (Supra, p. 248).

It is unnecessary to include leaseholds or terms of years in the dispositions in the text, as they vest in the executors.

of any of the trusts hereof, for the purchase-money of premises sold, or for any monies, funds, shares, or securities which may be paid or transferred to them or him in pursuance hereof, or of any of the trusts hereof, shall effectually discharge the purchaser or purchasers, or other the person or persons paying or transferring the same, therefrom, and from being concerned to see to the application, or being answerable for the misapplication or non-application thereof. AND I HEREBY DECLARE, that, if the said trustees hereby appointed, or any of them, or any trustee or trustees to be appointed as hereinafter is provided, shall die, or be desirous of being discharged, or refuse or become incapable to act, then and so often the said trustees or trustee (and, for this purpose, any retiring trustee shall be considered a trustee) may appoint any other person or persons to be a trustee or trustees in the place of the trustee or trustees so dying, or desiring to be discharged, or refusing or becoming incapable to act; AND, upon every such appointment, the said trust premises shall be so transferred, that the same may become vested in the new trustee or trustees, jointly with the surviving or continuing trustee or trustees, or solely, as the case may require, and every such new trustee shall (both before and after the said trust premises shall have become so vested) have the same powers, authorities, and discretions as if he had been hereby originally appointed a trustee. AND I DECLARE, that the trustees or trustee for the

Power to appoint new trustees.

Trustees' indemnity clause.

time being of this my will shall be chargeable only with such monies as they or he respectively shall actually receive, and shall not be answerable the one for the other of them, nor for any banker, broker, or other person in whose hands any of the trust monies shall be placed, nor for the insufficiency or deficiency of any stocks, funds, shares, or securities, nor otherwise for involuntary losses; AND that the said trustees or trustee for the time being may reimburse themselves or himself, out of the monies which shall come to their or his hands under the trusts aforesaid, all expenses to be incurred in or about the execution of the aforesaid trusts. IN WITNESS &c.

Power to reimburse themselves their expenses.

XLII.

CODICIL *appointing a* NEW TRUSTEE.

I, A. B., of &c., DECLARE this to be a codicil to my last will and testament, dated the —— day of ——. WHEREAS E. F., in my said will named, has lately died, NOW I HEREBY APPOINT L. M., of &c., to be a trustee and executor of my said will, and a guardian of my infant children, in the place of the said E. F.; and I declare, that my said will shall accordingly be read and construed as if the name of the said L. M. had been inserted therein throughout, instead of the name of the said E. F.; and in all other respects I confirm my said will. IN WITNESS &c.

XLIII.

Devise *in* strict Settlement (*a*).

I, A. B., of &c., DECLARE this to be my last will and testament. I DEVISE all my real estate (except what I otherwise dispose of by this my will, and except estates vested in me upon mortgage or trust) TO THE USE of my son D. B., during his life, without impeachment of waste; and after his decease, TO THE USE of each successively, according to seniority, of the sons of the said D. B. born during my life, for the life of such son, without impeachment of waste; and immediately after his decease, to the use of his first and other sons successively, according to seniority, in tail male; AND AFTER the failure or determination of the uses and estates hereinbefore limited, TO THE USE of the son and sons of the said D. B. born after my death, sucessively, according to seniority, in tail male; AND IN DEFAULT or failure of such issue, TO THE USE of each successively, according to seniority, of my sons hereafter to be born, during his life, without impeachment of waste; with re-

Devise in strict settlement to the testator's own and his brother's existing and after-born issue.

(*a*) This Precedent is not given as an example of a complete will, but as an example of a devise in strict settlement, now that the limitations to trustees to preserve contingent remainders are unnecessary.

mainder, immediately after the decease of each such son, to the use of his first and other sons sucessively, according to seniority, in tail male; AND AFTER the failure or determination of the uses and estates hereinbefore limited, TO THE USE of my brother E. B., during his life, without impeachment of waste; and after the decease of the said E. B., to the use of each successively, according to seniority, of the sons of the said E. B. born during my life, for the life of such son, without impeachment of waste; with remainder, immediately after the decease of each such son, to the use of his first and other sons successively, according to seniority, in tail male; AND AFTER the failure or determination of the uses and estates hereinbefore limited, TO THE USE of the son and sons of the said E. B. born after my decease, successively, according to seniority, in tail male; AND FOR DEFAULT of such issue, TO THE USE of my own right heirs. AND I HEREBY DECLARE, that, if any person who would, if this present declaration had not been inserted, be entitled to the possession, or the receipt of the rents and profits, of my said real estate, as tenant for life or in tail male by purchase, shall be under the age of twenty-one years, then and so often E. F., of &c., and G. H., of &c. [*trustees*], and the survivor of them, and the executors or administrators of such survivor, (hereinafter called the trustees or trustee), shall, during such minority, receive the rents and profits of, and manage the said real estate, with

Trusts during the minorities of devisees.

power to fell timber for repairs or sale, or otherwise, and to preserve game, and accept surrenders from, and make allowances to and arrangements with, tenants and others, and with all other powers expedient for the due management thereof; and after deducting the expenses of management, repairs, insurance, and other outgoings, and satisfying any and every annual sum, and the interest of any and every gross sum which may be charged upon the said real estate, or any part thereof, shall pay such sum as the said trustees or trustee shall think proper, for or towards the maintenance or education of such minor, (either directly, or to his guardians or guardian, to be applied by such guardians or guardian, without accounting to the said trustees or trustee), and shall accumulate the residue of the said rents and profits in the way of compound interest, by investing the same, and all the resulting income thereof, in the names or name of the said trustees or trustee, in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, with power to vary the same at their or his discretion; and shall hold all the said residue of the said rents and profits, and the stocks, funds, or securities in or upon which the same may be invested, and the annual income thereof, upon such trusts as the same would be held upon if the same were monies arising from sales under the power of sale hereinafter contained, or stocks, funds, or securities purchased therewith. AND I

Power of jointuring,

HEREBY DECLARE, that every person hereby made tenant for life of the said real estate may, at any time or times, either before or after he shall be entitled to the possession, or to the receipt of the rents and profits thereof, (but subject to the estates preceding his own estate, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by any deed or deeds, or by will or codicil, appoint to any woman or women whom he may marry or have married, for her or their life or respective lives, or any less period, a clear yearly rent-charge or rent-charges, not exceeding in the whole, for any one woman, the sum of £——, to be charged upon and payable out of all or any part of the said real estate, with usual powers by distress and entry for recovering and enforcing the payment thereof; AND MAY ALSO appoint the premises so charged to any person or persons, for any term or terms of years, with or without impeachment of waste, to take effect immediately after the decease of the person for the time being exercising this power, upon usual trusts for securing the payment of the same yearly rent-charge or rent-charges: PROVIDED NEVERTHELESS, that no rent-charge shall become a lien upon all or any part of the said real estate, or become payable, unless the person appointing the same shall be or become entitled to the possession, or to the receipt of the rents and profits, of the said real estate, or some issue of such person shall or

and of limiting terms of years to secure jointures.

No jointure to become a lien, unless the person limiting the same, or some of his issue, become entitled in possession.

would, if of full age, become so entitled; AND ALSO, that the said real estate shall not at any one time be subject to the payment of rent-charges exceeding in the whole the sum of £——, and that such rent-charges shall have priority of payment according to the priority in order of limitation of the respective estates of the several persons exercising the said power. AND I ALSO DECLARE, that every person hereby made tenant for life of the said real estate may, at any time or times, either before or after he shall be entitled to the possession, or to the receipt of the rents and profits thereof, (but subject to the estates preceding his own estate therein, and to the powers annexed to such preceding estates, and to the estates which may have been limited in exercise of such powers), by any deed or deeds, or by will or codicil, charge all or any part of the said real estate with the payment for the portion or portions of his child, or all or any of his children, (other than an eldest or only son, for the time being, entitled to the possession, or to the first estate of inheritance of the said real estate), of any sum or sums not exceeding in the different events hereinafter specified the different sums hereinafter mentioned; (that is to say), IF there shall be but one such child, (other than as aforesaid), the sum of £——; IF there shall be but two such children, (other than as aforesaid), the sum of £——; IF there shall be but three such children, (other than as aforesaid), the sum of £——; AND IF there shall be four or

The estates not to be subject to more than a specified annual sum at once for jointures.

Power of charging portions for younger children,

varying according to the number of children;

more such children, (other than as aforesaid), the sum of £——, to be an interest or interests vested, and to be paid to such child, or among such children, or any one or more of them, in such manner and form in every respect as the person for the time being exercising this power shall appoint; AND MAY, by the same or any other deed or deeds, or by will or codicil, charge the premises intended to be charged with such portion or portions respectively with the payment of any clear annual sum or sums, not exceeding the interest of the portion or portions, after the rate of £— per cent. per annum, to be applied for the maintenance or education of the child or children for whom such portion or portions shall be intended, until such portion or portions shall become payable, in such manner in every respect as the person for the time being exercising this power shall direct; AND MAY, to provide for the raising and payment of such portion or portions, and annual sum or sums, by the same or any other deed or deeds, or by will or codicil, appoint the premises charged therewith to any person or persons for any term or terms of years, with or without impeachment of waste, upon usual trusts for securing payment of the same: PROVIDED NEVERTHELESS, that no portion or annual sum shall become a lien upon all or any part of the said real estate, or become payable, unless the purson appointing the same shall be or become entitled to the possession, or to the receipt of the rents and profits, of the said real estate, or some

and with annual sums, by way of interest on the portions, for maintenance;

and to limit terms of years for raising the same.

No portion to become a lien unless the person charging the same, or some of his issue, become entitled in possession.

issue of such person shall, or would, if of full age, become so entitled; AND ALSO that the said real estate shall not at any one time be charged with a greater sum in the whole for portions than the sum of £——, and that such portions respectively shall have priority of payment, according to the priority in order of limitation of the respective estates of the several persons exercising the said power. AND I HEREBY DECLARE, that every person hereby made tenant for life of the said real estate, when he shall be in the actual possession or entitled to the receipt of the rents and profits thereof, and also the said trustees or trustee during the minority of any person who, if of full age, would be entitled to the possession, or to the receipt of the rents and profits of the said real estate, may, by any deed or deeds, appoint by way of demise &c. [*supra*, *p.* 245]. AND I HEREBY FURTHER DECLARE, that the said trustees or trustee may, during the life of any person hereby made tenant for life, and for the time being entitled to the possession, or to the receipt of the rents and profits, of the said real estate, with his consent in writing, and also during the minority of any person who, if of full age, would be entitled to the possession, or to the receipt of the rents and profits, of the said real estate, at the discretion of the said trustees or trustee, (but subject to any lease which may have been granted under the power in that behalf hereinbefore contained), dispose of, either by way of sale, or in exchange for other heredita-

The estates not to be subject to more than a specified sum at once for portions.

Power of leasing for twenty-one years.

Power of sale and exchange.

ments in England or Wales, all or any part of the said real estate, upon such terms and under such conditions as the said trustees or trustee shall think fit, with power to buy in or rescind any contract for sale or exchange of all or any of the said premises, and to re-sell or exchange the same, without being responsible for any loss which may be occasioned thereby, and with power, for the purpose of effectuating any such sale or exchange, to revoke all or any of the uses, trusts, or powers hereinbefore limited, or to be limited, under the powers of jointuring and charging portions hereinbefore contained, of the hereditaments sold or given in exchange, and to appoint the same in any manner they or he shall think fit. AND I DECLARE, that the receipt of the trustees or trustee for the purchase-monies of the premises sold, or for any monies received for equality of exchange, shall effectually discharge the purchaser or purchasers, or other person or persons paying the same, therefrom, and from being concerned to see to the application thereof, or being answerable for any non-application or misapplication thereof. AND I HEREBY DECLARE, that the said trustees or trustee shall, with such consent or at such discretion as aforesaid, lay out the money received upon any sale or for equality of exchange (*a*) in the purchase of freehold or copyhold hereditaments of inheritance (*b*) in England or Wales, and shall settle or

Trustees' receipt clause.

Monies arising under the power of sale and exchange to be laid out in the purchase of lands, to be settled to the uses of the settlement.

(*a*) See supra, p. 232, n. (*a*). (*b*) Id., n. (*b*).

cause the same to be settled to the uses and subject to the powers hereby limited or to be limited under the powers of jointuring and charging portions hereinbefore contained as far as the deaths of parties and other intervening circumstances will permit: PROVIDED ALWAYS, that the said trustees or trustee may, with such consent or at such discretion as are hereinbefore mentioned with respect to a sale or exchange, apply any monies to be received upon any sale or for equality of exchange as aforesaid, or any part thereof, in or towards satisfying any mortgage or other charge or incumbrance which may then affect all or any of the hereditaments which shall then be subject to the uses or trusts of this my will. AND I HEREBY FURTHER DECLARE, that, until the money to be received upon any sale or for equality of exchange shall be laid out or disposed of as aforesaid, the said trustees or trustee may, with such consent or at such discretion as aforesaid, invest the same in their or his names or name in any of the public stocks or funds of Great Britain, or upon Government or real securities in England, Wales, or Ireland, and may vary the same if and as they or he shall think fit; AND THAT the annual income from such stocks, funds, and securities shall be paid and applied to such person or persons, for such purposes, and in such manner as the rents and profits of the hereditaments to be purchased therewith as aforesaid would be payable or applicable in case such purchase and settlement as aforesaid were then ac-

Power for trustees to apply monies received on a sale or exchange in discharge of incumbrances;

and, till a purchase, to be invested in the funds or upon securities.

tually made. [*Devise of mortgage estates, supra, p.* 253. *Trustee clauses, supra, pp.* 254—256.] IN WITNESS &c.

Appointment of Trustees.

XLIV.

APPOINTMENT *of* NEW TRUSTEES *of a* MARRIAGE SETTLEMENT, (*to be indorsed on the Settlement* (*a*)).

Parties. THIS INDENTURE, made &c., BETWEEN the within-named A. B. and the within-named C. B., (then C. D., spinster) [*the husband and wife, donees of the power*], of the first part; the within-named G. H. [*the retiring trustee*], of the second part; and I. K., of &c., and L. M., of &c. [*new trustees*], of the third part. WHEREAS the marriage in the within-written indenture said to be intended was solemnised shortly after the date thereof. AND WHEREAS the within-named E. F. is dead, and the said G. H. is desirous of being discharged from the trusts of the within-written indenture. NOW THIS INDENTURE WITNESSETH,

Recital of the solemnisation of the marriage;

—of the death of one trustee, and of another desiring to be discharged.

Witnesseth.

(*a*) The settlement intended is that of which a Precedent is previously given, XXXIV. p. 211.

that they the said A. B. and C. B. do hereby, in exercise of the power in this behalf in the within-written indenture contained, appoint the said I. K. and L. M. respectively to be trustees of the within-written indenture in the place of the said E. F. and G. H. respectively. AND IT IS HEREBY DECLARED, that the said I. K. and L. M., their executors, administrators, and assigns, shall hold the within-mentioned sum of £—— £— per Cent. —— Bank Annuities, which is intended to be transferred into their names immediately after the execution of these presents, and the annual income thereof, UPON the trusts, and subject to the powers, upon and subject to which the same ought to be held by virtue of the within-written indenture (*a*). IN WITNESS &c.

Appointment of new trustees.

Declaration of trust.

XLV.

APPOINTMENT *of* NEW TRUSTEES *of a* WILL *of Real and Personal Estate* (*b*).

THIS INDENTURE, made &c., BETWEEN E. F., of &c., and G. H., of &c. [*surviving trustees*], of

Parties.

(*a*) It will, of course, be understood, that, if there have been any dealings with the trust property since the date of the settlement, they must be stated so as to shew the funds now subject to the settlement.

(*b*) The will intended is that of which a Precedent is given, XLI. p. 248.

the first part; L. M., of &c. [*new trustee*], of the second part; and N. O., of &c. [*provisional trustee*], of the third part. WHEREAS A. B., late of ——, &c., duly made his will, dated the —— day of ——, and thereby, after giving divers specific legacies and a pecuniary legacy, devised all his real estate (except what he thereby otherwise devised, and except estates vested in him upon mortgage) unto the said E. F., and G. H., and I. K., their heirs and assigns, upon certain trusts and with certain powers thereby declared; and bequeathed all his personal estate (except chattels real included in the said devise of real estate, and except what he thereby otherwise disposed of) unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, upon the trusts and with the powers thereinafter declared and contained of the same; and devised all the freehold and copyhold hereditaments vested in him upon mortgage unto the said E. F., G. H., and I. K., their heirs and assigns, subject to the equity of redemption subsisting therein respectively; and the said testator thereby appointed the said E. F., G. H., and I. K., executors of his said will, and declared, that, in case the said trustees, &c. [*recite the power to appoint new trustees literally*].

Recital of the will;

—of testator's death, and probate of his will;

AND WHEREAS the said A. B. died without having revoked or altered his said will, and the same was proved by the said E. F., G. H., and I. K., in the —— Court of ——, on the —— day of ——.

—of the death of a trustee.

AND WHEREAS the said I. K. died in the month

of —— last. NOW THIS INDENTURE WITNESSETH, that they the said E. F. and G. H. do hereby, in exercise of the aforesaid power in this behalf, appoint the said L. M. to be a trustee of the said will of the said A. B. in the place of the said I. K. AND THIS INDENTURE ALSO WITNESSETH, that, in obedience to the aforesaid directions in this behalf, they the said E. F. and G. H. do hereby grant unto the said L. M. and his heirs ALL THAT the said real estate and premises by the said will of the said A. B. devised unto the said E. F., G. H., and I. K., their heirs and assigns, upon trust as aforesaid, with the rights, easements, and appurtenances, and all the estate and interest of them the said E. F. and G. H., and each of them, in the premises, TO HOLD the said premises UNTO the said L. M. and his heirs, TO THE USE of the said E. F., G. H., and L. M., their heirs and assigns, UPON THE TRUSTS, and with the powers, upon and with which the same ought to be held by virtue of the said will. AND THIS INDENTURE ALSO WITNESSETH, that, in obedience to the aforesaid direction in this behalf, they the said E. F. and G. H. do hereby assign unto the said N. O., his executors, administrators, and assigns, all the said personal estate of the said A. B., by the said will bequeathed unto the said E. F., G. H., and I. K., their executors, administrators, and assigns, and now vested in the said E. F. and G. H., and all the estate and interest of them the said E. F. and G. H., and each of them, in the premises, TO

Witnesseth.

Appointment of new trustee.

Conveyance.

Habendum.

Assignment of personalty to provisional trustee.

Habendum in

trust to re-assign to continuing and new trustees.

HOLD the said premises UNTO the said N. O., his executors, administrators, and assigns, UPON TRUST, forthwith to assign the same unto the said E. F., G. H., and L. M., their executors, administrators, and assigns, upon the trusts, and with the powers, upon and with which the same ought to be held by virtue of the said will. AND THIS INDENTURE ALSO WITNESSETH, that, in obedience to the aforesaid directions in this behalf, they the said E. F. and G. H. do hereby grant and convey unto the said L. M., and his heirs, ALL the freehold hereditaments which were vested in the said testator at his death upon mortgage, with their rights, easements, and appurtenances, TO HOLD the said premises UNTO the said L. M. and his heirs, TO THE USE of the said E. F., G. H., and L. M., their heirs and assigns, subject to the equity of redemption now subsisting therein, respectively (*a*). [*Covenant by E. F. and G. H., with L. M., against incumbrances, supra, p.* 112.] IN WITNESS &c.

Conveyance of mortgage estates.

Habendum to the use of continuing and new trustees.

(*a*) The copyholds must be surrendered in like manner. A covenant to that effect may be introduced into the deed.

XLVI.

Re-conveyance *and* Re-assignment *by the provisional Trustee, (to be indorsed on the last Deed).*

THIS INDENTURE, made &c., BETWEEN the within-named N. O. [*provisional trustee*], of the one part, and the within-named E. F., G. H., and L. M. [*trustees*], of the other part, WITNESSETH that, in pursuance of the trust by the within-written deed reposed in the said N. O., he the said N. O. doth hereby assign unto the said E. F., G. H., and L. M., their executors, administrators, and assigns, ALL the personal estate by the within-written indenture assigned unto the said N. O., his executors, administrators, and assigns, AND ALL the estate and interest of the said N. O. in the said premises, TO HOLD the said premises unto the said E. F., G. H., and L. M., their executors, administrators, and assigns, UPON THE TRUSTS, and subject to the powers, upon and subject to which the same ought to be held by virtue of the within-mentioned will. IN WITNESS &c.

Parties.

Witnesseth.

Assignment by provisional trustee of the personal estate.

Habendum to the continuing and new trustees, upon the trusts of the will.

Disentailing Deeds.

XLVII.

Deed *by* Tenant *in* Tail *in* Possession *to* bar *the* Entail *of Freeholds, the Creation of the Entail not being recited.*

Parties. THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*tenant in tail*], of the one part, and C. D., of &c. [*grantee to uses*], of the other part, WITNESSETH, that, for barring and defeating every estate in tail, either at law or in equity, of the said A. B. in the hereditaments intended to be hereby conveyed, and all remainders, reversions, estates, rights, titles, interests, and powers to take effect after the determination or in defeasance of every such estate in tail, he the said A. B. doth hereby grant unto the said C. D., and his heirs, ALL the freehold manors, messuages, lands, and hereditaments in the parish of ——, in the county of ——, or any parish or place adjoining thereto, of or to which the said A. B. is seised or entitled, at law or in equity, for any estate in tail [*general words, and estate clause, supra, p.* 97], TO HOLD the said premises unto the said C. D. and his heirs, TO THE USE of the said A. B., his heirs and assigns. IN WITNESS &c.

Witnesseth, that, to bar his entail, the tenant in tail conveys.

Parcels.

Habendum.

XLVIII.

Deed *by* Tenant *in* Tail, *with the Consent of the* Protector, *to* bar *an* Entail *of Freeholds.*

THIS INDENTURE, made &c., BETWEEN C. B., [*tenant in tail*], of the first part; A. B., of &c. [*protector*], of the second part; and E. F., of &c. [*grantee to uses*], of the third part. WHEREAS, by an indenture dated the —— day of ——, and expressed to be made between [*parties*], certain manors, messuages, lands, and hereditaments in the parishes of —— and ——, in the county of ——, in the said indenture described or referred to, were limited to certain uses, which have now failed or determined, and, after the failure or determination thereof, to the use of the said A. B., and his assigns, during his life, without impeachment of waste; with remainder, to the use of certain persons and their heirs, during the life of the said A. B., in trust for him and his assigns, and to preserve the contingent remainders; with remainder, to the use of the first and other sons of the body of the said A. B. successively, according to their respective seniorities, in tail; with remainders over. AND WHEREAS some of the hereditaments comprised in the aforesaid indenture have been sold and given in exchange under a

Parties.

Recital of creation of the entail;

—of changes in the estates;

power in that behalf therein contained, and other hereditaments have been taken in exchange and purchased under the same power, and have been limited to the uses of the said indenture, by reference thereto, and certain lands have been allotted, by an award under an inclosure act, in respect of lands comprised in the said indenture, or settled by reference thereto. AND WHEREAS the said C. B. is the first son of the body of the said A. B., and has attained his age of twenty-one years, and is desirous of barring the said estate tail, and every other estate tail (if any) of him the said C. B. in the aforesaid manors, messuages, lands, and hereditaments, and all remainders, reversions, estates, rights, titles, interests, and powers to take effect after the determination, or in defeasance of the said estate tail, and of every other estate tail (if any) of him the said C. B. in the said premises, and of limiting the same premises to the use of him, his heirs and assigns. AND WHEREAS the said A. B., as protector of the said settlement, has consented thereto, NOW THIS INDENTURE WITNESSETH, that, for effectuating the said desire, he the said C. B., with the consent of the said A. B., doth hereby grant unto the said E. F., and his heirs, ALL AND SINGULAR the said manors, messuages, lands, and hereditaments by the said indenture, or by reference thereto, limited as aforesaid, or which, under the said award or otherwise howsoever, are now subject to the subsisting uses thereof [*general words, and estate clause, supra, p.* 97], EXCEPT

—of the birth and majority of the tenant in tail and the desire to bar the entail;

—of the consent of the protector.

Witnesseth.

Conveyance.

Parcels.

such of the said hereditaments comprised in the said indenture as have been sold or given in exchange, TO HOLD the said premises (except as aforesaid, and subject and without prejudice to the said estate for life of the said A. B., and to such of the powers and privileges thereto annexed, or exercisable during the continuance thereof, as are now subsisting or capable of being exercised) UNTO the said E. F., and his heirs, TO THE USE of the said C. B., his heirs and assigns. IN WITNESS &c. Habendum.

Articles of Co-Partnership.

XLIX.

ARTICLES *of* CO-PARTNERSHIP.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., of the one part; and C. D., of &c., of the other part; WITNESSETH,—I. THAT they the said A. B. and C. D. will become and remain co-partners in the business of ——, for the term of —— years, from the date of these presents, if both of them shall so long live. Parties. Agreement to become co-partners.

II. THAT, if, nevertheless, at the end of seven years from the date of these presents, either of the said partners shall be desirous that the said co-partnership shall determine, and of such his de- Proviso for the determination of the co-partnership at the end of the first seven years.

sire shall give not less than six calendar months' previous notice in writing to the other of them, or shall leave such notice at the place where the said business shall for the time being be carried on, in such case, upon the end of the said seven years, the said co-partnership shall determine.

Firm and style.

III. THAT the firm of the said co-partnership shall be ——.

Place of business.

IV. THAT the business of the said co-partnership shall be carried on at ——, or at such other place or places as the said co-partners shall hereafter determine.

Partners to attend to the business.

V. THAT both of them the said A. B. and C. D. will at all times diligently employ themselves in the business of the said co-partnership, and carry on the same for the greatest advantage.

Partners not to be engaged in any other business;

VI. THAT neither of them will, either directly or indirectly, engage in any business except the business of the said co-partnership, and upon account thereof.

or to hire or dismiss any servant without mutual consent.

VII. THAT neither of them shall take any apprentice, or hire or dismiss any clerk, traveller, workman or servant without the consent of the other.

Capital, amount, and contribution of,

VIII. THAT the capital of the said co-partnership shall consist of the sum of £——, to be brought in by the said A. B. and C. D. in equal shares.

and employment of.

IX. THAT the said capital and the profits arising therefrom, (including the premiums to be paid for any apprentice to be taken by either of the said

co-partners), shall (subject as hereinafter is mentioned) be employed in the said business.

Outgoings of the partnership to be paid out of the capital and profits, or, in case of deficiency, by the partners in equal shares.

X. THAT the rent of the houses, mills, and buildings in —— aforesaid, or of any other buildings where the said business shall be carried on, and the cost of repairs and alterations, and all rates, taxes, payments for insurance, and other outgoings whatsoever in respect of the same, and the wages and remuneration of all persons employed in the said business, and all other monies to become payable upon account of the said business, and all losses which shall happen in the same, shall be paid out of the capital of the said co-partnership, and the profits arising therefrom, or, if the same shall be deficient, by the said co-partners in equal shares.

That both partners shall sign securities for money;

XI. THAT, where there shall be occasion to give any security or undertaking for the payment of money on account of the said co-partnership, (except when the contrary shall, in the common course of business, be unavoidable), the same shall be signed by both of the said co-partners.

and any security signed by one alone to be the separate liability of the partner giving it.

XII. THAT, if either of the said co-partners shall give such any security or undertaking as aforesaid, (except in the case aforesaid), which shall not be signed by the other of them, the same shall be deemed to be given on the separate account of the partner so giving it, and he shall satisfy the same out of his separate estate, and shall indemnify the other of them from all expenses on account thereof.

Either partner lending or giving credit to any person whom the other shall previously have forbidden him to trust, to make good the deficiency.

XIII. THAT, if either of the said co-partners shall lend any of the monies, or deliver upon credit any of the goods of the said co-partnership, to any person or persons whom the other of them shall previously, in writing, have forbidden him to trust, the partner so lending or delivering shall pay to the said co-partnership so much ready money as the full amount or value of the money or goods which he shall so lend or deliver.

Neither partner, without the consent of his co-partner, to enter into any contract above a certain amount, on pain of the same being deemed his private contract.

XIV. THAT, if either of the said co-partners shall buy any goods or articles exceeding the value of £——, without the previous consent in writing of the other, the other shall have the option either to take such goods or articles on account of the said co-partnership, or to let the same remain the separate property of the co-partner who shall have so bought the same.

Neither partner, without consent of his co-partner, to become surety, or do any act whereby the co-partnership property may be taken in execution.

XV. THAT neither of the said co-partners shall, without the previous consent in writing of the other, enter into any bond, or become bail or security for any person, or subscribe any policy of insurance, or do, or willingly suffer to be done, anything whereby the capital or property of the said co-partnership may be extended or taken in execution.

Each partner to pay his private debts, and to indemnify the co-partnership against them.

XVI. THAT each of the said co-partners will punctually pay his separate debts, and indemnify the other of them, and the capital and property of the said co-partnership, against the same, and all expenses on account thereof.

Books of ac-

XVII. THAT books of account shall be kept

by the said co-partners, and proper entries made therein of all the sales, purchases, receipts, payments, engagements, transactions, and property of the said co-partnership; and the said books of account, and all securities, papers, and writings of the said co-partnership, shall be kept at the counting-house, in —— aforesaid, or in such other place where the business shall be carried on, and each of the said co-partners shall have free access at all times to examine and copy out the same.

Count to be kept, and remain, with all partnership documents, at the place of business.

XVIII. That, on the —— day of ——, in the year ——, and on the —— day of —— in every succeding year, a general account shall be made and taken by the said co-partners of all the sales, purchases, receipts, payments, engagements, and transactions of the said co-partnership during the then preceding year, and of all the capital, property, engagements, and liabilities for the time being of the said co-partnership; and the said general account shall, immediately after the same shall be made and taken, be written into two books, and be signed in each such book by each of the said co-partners; and, after such signature, each of them shall keep one of the said books, and shall be bound by every such account, except that, if any manifest error be found therein by either of the said co-partners, and signified to the other of them within twelve calendar months after the same shall have been so signed by both of them, such error shall be rectified.

Annual accounts and valuations to be made on a certain day in each year.

XIX. That the said A. B. and C. D. shall be

Partners to

have the net profits in equal shares.

entitled to the net profits arising from the said business, and remaining after the payments hereinbefore directed to be made thereout, in equal shares.

Partners may every year draw certain quarterly sums out of the net profits, subject to a provision for refunding at the end of the year, in case of deficiency.

XX. THAT in each year it shall be lawful for each of them the said A. B. and C. D. to take out of the net profits of the said business, by equal quarterly payments, on the —— day of ——, the —— day of ——, the —— day of ——, and the —— day of ——, the sum of £—— for his separate use; but in case, at the end of any year, it shall appear, upon taking the general annual account, that the net profits of such year shall not have amounted to the sum of £—— [*the total amount of the quarterly allowances to both partners*], in such case, immediately after such general annual account shall have been taken, each of them the said A. B. and C. D. shall repay to the said co-partnership the excess (if any) of the amount of the sums which he shall actually have received in respect of such quarterly payments over the sum which he shall have been entitled to receive as his share of the net profits of the said business.

Provision, in case one partner die during the partnership, for ascertaining the sum to be paid to his representative,

XXI. THAT, if either of the said co-partners shall die during the said co-partnership, his executors and administrators shall, if such death shall happen before the day hereinbefore appointed for the first general annual account, be entitled to the capital brought in by such deceased partner; or, if the same shall happen after the day herein-

before appointed for the first annual account, shall be entitled to such sum of money as the share of the deceased partner of the capital and property of the said co-partnership shall, upon the then last general annual account, amount to, or as such share would have amounted to in case such account had been taken on the —— day of —— [*the proper day for taking such account*] immediateley preceding such death; and in either case the executors or administrators of the deceased partner shall also be entitled to an allowance, after the rate of £— per cent. per annum, upon the capital, or share of capital, and property (as the case may be) of such deceased partner, in lieu of profits, from the commencement of the said co-partnership, or from the then last general annual account, (as the case may be), to the time of such death; and the surviving partner, his executors or administrators, shall pay such allowance in lieu of profits on demand, and shall, within —— next after the death of the deceased partner, execute and deliver to his executors or administrators a bond in a penalty double the principal, conditioned for the payment of the said principal sum to which they shall become entitled as aforesaid, with interest thereon after the rate of £—— per cent. per annum from such death, in manner following; (that is to say), one third part of such principal sum, with the interest on the same third part, at the end of six calendar months from the date of such bond; one other

with a certain allowance in lieu of profits;

and determining the mode and time of payment, and the security to be given by the surviving partner;

third part, with interest thereon, at the end of twelve calendar months from the date of such bond; and the remaining third part, with interest thereon, at the end of eighteen calendar months from the date of such bond.

and for the execution of proper indemnities and releases.

XXII. THAT the surviving partner, his executors or administrators, shall also execute and deliver a bond in a sufficient penalty to the executors or administrators of the deceased partner, for indemnifying them, and the estate of the deceased partner, from the debts, engagements, and liabilities of the said co-partnership at or after such decease, and from all expenses on account of the same; and the executors or administrators of the deceased partner shall release and assign unto the surviving partner, his executors or administrators, all their share, right, title, and interest in the capital and property of the said co-partnership, and empower him and them, as much as in them lies, to recover and receive the same. IN WITNESS &c.

Production of Deeds.

L.

Covenant *to produce* Deeds.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*vendor*], of the one part, and C. D., of &c. [*purchaser*], of the other part. WHEREAS, by an indenture bearing even date with, but executed before these presents, and expressed to be made between the said A. B., of the first part, the said C. D., of the second part, and E. F., of the third part, in pursuance of a contract for sale, and for the consideration therein mentioned, certain —— and hereditaments therein described have been limited to such uses, and upon and for such trusts and purposes, as the said C. D. shall, by any deed or deeds, appoint; and in default of, and until, and subject to such appointment, to the use of the said C. D., and his assigns, during his life, with remainder to the use of the said E. F., and his heirs, during the life of the said C. D., in trust for him and his assigns, with remainder to the use of the said C. D., his heirs and assigns. AND WHEREAS the several deeds, evidences, and writings specified in the schedule hereto relate as well to the hereditaments comprised in the said

Parties.

Recital of the deed of conveyance of even date;

—of the deeds relating to other estates than those sold.

indenture of even date as to other hereditaments belonging to the said A. B., and on the said contract for sale it was agreed that the said deeds, evidences, and writings should remain in the possession of the said A. B., his heirs and assigns, and that he should enter into the covenant hereinafter contained. NOW THIS INDENTURE WITNESSETH, that, in pursuance of the said agreement, and in consideration of the premises, he the said A. B. doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said C. D., his heirs and assigns, that he the said A. B., his heirs and assigns, will, at all times, upon a reasonable request in writing by the said C. D., his heirs, appointees, or assigns, or any person lawfully or equitably claiming through him or them any estate or interest in the said hereditaments comprised in the said indenture of even date, at the expense of the person or persons requiring the same, produce to him or them, or to such person or persons as he or they shall appoint, or in any court of law, equity, or other judicature, or elsewhere, as occasion shall require, all or any of the deeds, evidences, or writings specified in the said schedule hereto, for the support or manifestation of the estate or title of the said C. D., his heirs, appointees, and assigns, and every other person claiming as aforesaid; AND WILL at all times, upon such request and at such expense as aforesaid, make and deliver to the person or persons requiring the same, or to such person or

Witnesseth.

Covenant by vendor to produce deeds,

and allow copies to be taken.

persons as he or they shall appoint, such true and attested copies, or true copies unattested, of the same deeds, evidences, and writings as he or they may require, and will, in the meantime, keep the same deeds, evidences, and writings safe, uncancelled, and undefaced, unless prevented by fire or other inevitable accident (*a*). IN WITNESS &c.

THE SCHEDULE to which the above-written INDENTURE refers.

(*a*) If the contract for sale contains (as is often the case) a stipulation to this effect, insert the following proviso :— "PROVIDED NEVERTHELESS, that, if the said A. B., his heirs or assigns, shall dispose of all or any of the said other hereditaments to which the said deeds, evidences, and writings relate, to any person or persons, and shall deliver the same deeds, evidences, and writings to such person or persons, and shall at his or their own cost procure such person or persons to enter into a covenant with the said C. D., his heirs and assigns, of the purport and effect of the covenant hereinbefore contained, then the said covenant hereinbefore contained shall become void."

LI.

AGREEMENT *for the* DEPOSIT *of* DEEDS *relating to* TWO *Estates mortgaged to* DIFFERENT *Mortgagees.*

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c. [*mortgagor*], of the first part; C. D., of &c. [*mortgagee*], of the second part; and E. F., of &c. [*mortgagee*], of the third part. WHEREAS by an indenture dated the —— day of ——, and expressed to be made between [*parties*], certain estates in the county of W. were conveyed by, or by the direction of, the said A. B. to the use of the said C. D., his heirs and assigns, by way of mortgage, for securing the sum of £——, and interest. AND WHEREAS the deeds, evidences, and writings specified in the schedule hereto relate to the title of the said estates, and on the said mortgage were delivered to the said C. D., and have been deposited by him with Messrs. ——, his bankers. AND WHEREAS, by an indenture bearing even date with, but executed before, these presents, and made, or expressed to be made, between [*parties*], certain estates in the county of S. have been conveyed by the said A. B. to the use of the said E. F., his heirs and assigns, by way of mortgage, for securing the sum of £——, and interest. AND WHEREAS the said deeds, evidences,

Recital of the first mortgage;

—of the title-deeds having been delivered to the mortgagee, and deposited at his bankers;

—of the second mortgage;

—that the

and writings relate to the title of the said estates in the county of S., as well as to the said estates in the county of W. AND WHEREAS, on the treaty for the said mortgage to the said E. F., it was agreed that the said parties hereto should enter into the agreements hereinafter contained. NOW THIS INDENTURE WITNESSETH, and in consideration of the premises it is hereby agreed, that, so long as any money shall remain on the said mortgage of the said W. estates, and also on the said mortgage of the said S. estates, the said deeds, evidences, and writings specified in the said schedule hereto shall remain deposited in the banking-house of Messrs. ——, on the account and for the use of the said C. D. and E. F., and their respective heirs, executors, administrators, and assigns; and that the said C. D., his heirs, executors, administrators, and assigns, and his and their solicitors and agents, and the said E. F., his heirs, executors, administrators, and assigns, and his and their solicitors and agents, shall at all times have access to the said deeds, evidences, and writings, to examine, copy, or abstract the same, or make extracts therefrom, and for all other reasonable purposes; AND THAT the said deeds, evidences, and writings shall be produced and used on all occasions on which they may be reasonably required for the support or manifestation of the title of the said C. D., his heirs, executors, administrators, and assigns, to the said W. estates, or any part thereof, and of the said E. F., his heirs,

deeds relate to the title of the estate in the second mortgage;

—of the agreement to enter into the present agreement.

Witnesseth.

Agreement that the deeds shall remain deposited, and that both mortgagees shall have access thereto;

—and that the deeds shall be produced on all reasonable occasions;

executors, administrators, or assigns, to the said S. estates, or any part thereof; AND THAT, when and if the said mortgage on either of the said estates shall be paid off, while any money remains on the mortgage of the other of the said estates, the said deeds, evidences, and writings shall be delivered and belong to the mortgagee whose mortgage-money, or some part of whose mortgage-money, shall still remain unpaid, his heirs, executors, administrators, and assigns. IN WITNESS &c.

and that, if either of the mortgages shall be paid off, the deeds shall be given to the other mortgagee.

THE SCHEDULE to which the above-written INDENTURE refers.

LII.

AGREEMENT *for the* DEPOSIT *of* DEEDS *relating to an Estate mortgaged to* TWO *Mortgagees* SUCCESSIVELY.

Parties.

THIS INDENTURE, made &c., BETWEEN A. B., of &c., and C. D., of &c. [*mortgagors*], of the first part; E. F., of &c., G. H., of &c., and J. K., of &c. [*first mortgagees*], of the second part; and L. M., of &c., N. O., of &c., P. Q., of &c., and R. S., of &c. [*second mortgagees*], of the third part. WHEREAS, by an indenture dated the —— day of ——, and made, or expressed to be made, between [*parties*], divers hereditaments, situate in the parish

Recital of first mortgage;

of ——, in ——, and in the said indenture now in recital, or the schedule thereto, particularly described, were conveyed and assured, by, and by the direction of, the said A. B. and C. D., TO THE USE of the said E. F., G. H., and J. K., their heirs and assigns, by way of mortgage for securing the sum of £——, and interest. AND WHEREAS the several deeds, evidences, and writings specified in the schedule hereto relate to the title of the said hereditaments, and, on the execution of the hereinbefore-recited mortgage, were delivered to the said E. F., G. H., and J. K. AND WHEREAS parts of the said hereditaments have been sold, and the purchase-monies applied towards the discharge of the said mortgage debt, and, upon the sales thereof, the said E. F., G. H., and J. K., with the approbation of the said A. B. and C. D., have entered into covenants with the purchasers of the hereditaments so sold for the production and safe custody, and furnishing copies, of the said deeds, evidences, and writings, or some of them. AND WHEREAS the principal sum of £—— is now due and owing to the said E. F., G. H., and J. K., upon the security of the hereinbefore-recited indenture. AND WHEREAS, by an indenture bearing even date with, but executed before, these presents, and made, or expressed to be made, between [*parties*], such parts of the said hereditaments comprised in the said indenture of the —— day of —— as now remain unsold, have

—of the deeds relating to the title;

—of parts of the estate having been sold, and of the mortgagees having entered into covenants with the purchasers for production;

—of the state of the first mortgage debt;

—of the second mortgage;

been conveyed by the said A. B. and C. D. to the use of the said L. M., N. O., P. Q., and R. S., their heirs and assigns, by way of mortgage for securing the sum of £—— and interest. AND WHEREAS, upon the treaty for the said mortgage made by the lastly hereinbefore-recited indenture, it was agreed that the said deeds, evidences, and writings should be deposited in the bank of Messrs. ——, in ——, and that the said parties to these presents should enter into such agreement respecting the same as is hereinafter contained. AND WHEREAS the said deeds, evidences, and writings have been so deposited in the said bank of Messrs. ——. NOW THIS INDENTURE WITNESSETH, and, in consideration of the premises, IT IS HEREBY AGREED AND DECLARED, that so long as any principal money or interest shall remain on the security of both the hereinbefore-recited indentures respectively, the said deeds, evidences, and writings specified in the said schedule hereto, shall remain deposited in the said bank of Messrs. ——, on the account of the said E. F., G. H., and J. K., their heirs, executors, administrators, and assigns, on the one part, and the said L. M., N. O., P. Q., and R. S., and their heirs, executors, administrators, and assigns, on the other part; AND that the said E. F., G. H., and J. K., their heirs, executors, administrators, and assigns, and their solicitors and agents, and the said several persons with whom the said E. F.,

—of the agreement for the deposit of the deeds;

—of the deposit.

Witnesseth.

Agreement that the deeds shall remain deposited, and that both sets of mortgagees shall have access thereto;

G. H., and J. K. have entered into covenants as aforesaid, and the heirs and assigns of such persons respectively, and all other persons entitled to the benefit of the said covenants respectively, and also the said L. M., N. O., P. Q., and R. S., their heirs, executors, administrators, and assigns, and their solicitors and agents, shall and may at all times have access to the said deeds, evidences, and writings, to examine, copy, and abstract the same, or make extracts therefrom, and for all other reasonable purposes. AND, FURTHER, that the said deeds, evidences, and writings shall be produced and used on all occasions on which they may be reasonably required to the defence or manifestation of the title of the said E. F., G. H., and J. K., their heirs, executors, administrators, and assigns, or of any of their said covenantees, or the heirs or assigns of such covenantees respectively, or any of them, or of any other the persons entitled to the benefit of the said covenants, and of the said L. M., N. O., P. Q., and R. S., their heirs, executors, administrators, and assigns, to the said hereditaments hereinbefore referred to, or any of them, or any part thereof. AND, FURTHER, that, when and if either of the said hereinbefore-recited mortgages shall be paid off while any money remains due on the other of the said mortgages, then and from thenceforth the said deeds, evidences, and writings shall be delivered and belong to the

and that the deeds shall be produced on all reasonable occasions;

and that, if either of the mortgages be paid off, the deeds shall be given to the other mortgagees.

mortgagees whose mortgage-money, or some part of whose mortgage-money, shall remain unpaid, their heirs, executors, administrators, and assigns.

In witness &c.

THE SCHEDULE to which the above-written Indenture refers.

APPENDIX.

8 & 9 Vict. Cap. 119.

An Act to facilitate the Conveyance of Real Property.

Whereas it is expedient to facilitate the sale and conveyance of real property: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That, whenever any party to any deed, made according to the forms set forth in the first schedule of this act, or to any other deed which shall be expressed to be made in pursuance of this act, or referring thereto, shall employ in any such deed respectively any of the forms of words contained in column I. of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed as if such party had inserted in such deed the form of words contained in column II. of the same schedule, and distinguished by the same number as is annexed to the form of words employed by such party; but it shall not be necessary in any such deed to insert any such number.

Where the words of column I. of the second schedule are employed, the deed to have the same effect as if the words in column II. were inserted.

II. That every such deed, unless any exception be specially made therein, shall be held and construed to include all houses, outhouses, edifices, barns, stables, yards, gardens, orchards, commons, trees, woods, underwoods, mounds, fences, hedges, ditches, ways, waters, watercourses, lights, liberties, privileges, easements, profits, commodities, emolu-

Deed to include all houses, &c., and the reversion and all the estate.

ments, hereditaments, and appurtenances whatsoever, to the lands therein comprised belonging or in anywise appertaining, or with the same demised, held, used, occupied, and enjoyed, or taken or known as part or parcel thereof, and also the reversion or reversions, remainder and remainders, yearly and other rents, issues, and profits of the same lands, and of every part and parcel thereof, and all the estate, right, title, interest, inheritance, use, trust, property, profit, possession, claim, and demand whatsoever, both at law and in equity, of the grantor, in, to, out of, or upon the same lands, and every part and parcel thereof, with their and every of their appurtenances.

Stamp duty on deed to be same as on lease, &c. for a year.

III. That every such deed under this act shall be chargeable with the stamp duty with which the same would have been chargeable in case it had been a release founded on a lease or bargain and sale for a year, and also with the same stamp duty (exclusive of progressive duty) with which such lease or bargain and sale for a year would have been chargeable.

Remuneration for deed under the act not to be by length only.

IV. That, in taxing any bill for preparing and executing any deed under this act, it shall be lawful for the taxing officer, and he is hereby required, in estimating the proper sum to be charged for such transaction, to consider not the length of such deed, but only the skill and labour employed, and responsibility incurred, in the preparation thereof.

Deed failing to take effect by this act to be as valid as if act not made.

V. That any deed, or part of a deed, which shall fail to take effect by virtue of this act, shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this act had not been made.

Construction of act.

VI. That in the construction, and for the purposes of this act, and the schedules hereto annexed, unless there be something in the subject or context repugnant to such construction, the word "lands" shall extend to all freehold

tenements and hereditaments, whether corporeal or incorporeal, and to such customary land as will pass by deed, or deed and admittance, and not by surrender, or any undivided part or share therein repectively; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and the converse; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "party" shall mean and include any body politic or corporate or collegiate, as well as an individual.

VII. That the schedules, and the directions and forms therein contained, shall be deemed and taken to be parts of this act. Schedules, &c. to form part of act.

VIII. That the act shall commence and take effect from and after the first day of October next. Commencement of act.

IX. That this act shall not extend to Scotland. Not to extend to Scotland.

SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

This Indenture, made the —— day of ——, one thousand eight hundred and forty- ——[*or other year*], in pursuance of an act to facilitate the conveyance of real property, between [*here insert names of parties, and recitals, if any*], witnesseth, that, in consideration of £—— sterling now paid by the said [*grantee or grantees*] to the said [*grantor or grantors*], (the receipt whereof is hereby by him [*or*, "them"] acknowledged), he [*or*, "they"] the

said [*grantor or grantors*] doth [*or*, "do"] grant unto the said [*grantee or grantees*], his [*or*, "their"] heirs and assigns, for ever, all &c. [*parcels. Here insert covenants, or any other provisions.*] In witness whereof the said parties hereto have hereunto set their hands and seals.

THE SECOND SCHEDULE.

Directions as to the Forms in this Schedule.

1. Parties who use any of the Forms in the first column of this schedule may substitute for the words "covenantor" or "covenantee," or "releasor" or "releasee," any name or names, and in every such case corresponding substitutions shall be taken to be made in the corresponding Forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in any of the Forms in the first column of this schedule, and corresponding changes shall be taken to be made in the corresponding Forms in the second column.

3. Such parties may introduce into or annex to any of the Forms in the first column any express exceptions from or other express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding Forms in the second column.

4. Such parties may add the name or other designation of any person or persons, or class or classes of persons, or any other words, at the end of Form 2 of the first column, so as thereby to extend the words thereof to the acts of any additional person or persons, or class or classes of persons, or of all persons whomsoever; and in every such case the covenants 2, 3, and 4, or such of them as shall be employed in such deed, shall be taken to extend to the acts of the person or persons, class or classes of persons, so named.

Column I.	Column II.
1. The said [*covenantor*] covenants with the said [*covenantee*],	1. And the said covenantor doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said covenantee, his heirs and assigns, in manner following: (that is to say),
2. that he has the right to convey the said lands to the said [*covenantee*] notwithstanding any act of the said [*covenantor*];	2. That, for and notwithstanding any act, deed, matter, or thing by the said covenantor done, executed, committed, or knowingly or wilfully permitted or suffered, to the contrary, he the said covenantor now hath in himself good right, full power, and absolute authority to convey the said lands and other the premises hereby conveyed or intended so to be, with their and every of their appurtenances, unto the said covenantee, in manner aforesaid, and according to the true intent of these presents;
3. and that the said [*covenantee*] shall have quiet possession of the said lands,	3. and that it shall be lawful for the said covenantee, his heirs and assigns, from time to time, and at all times hereafter, peaceably and quietly to enter upon, have, hold, occupy, possess, and enjoy the said lands and premises hereby conveyed, or intended so to be, with their and every of their appurtenances, and to have, receive, and take the rents, issues, and profits thereof, and of every part thereof, to and for his and their use and benefit, without any let, suit, trouble, denial, eviction, interruption, claim, or demand whatsoever of, from, or by him the said covenantor or his heirs, or any person claiming or to claim by, from, under, or in trust for him, them, or any of them;

Column I.—*continued.*	Column II.—*continued.*
4. free from all incumbrances.	4. and that free and clear, and freely and absolutely acquitted, exonerated, and for ever discharged, or otherwise by the said covenantor or his heirs well and sufficiently saved, kept harmless, and indemnified of, from, and against any and every former and other gift, grant, bargain, sale, jointure, dower, use, trust, entail, will, statute, recognisance, judgment, execution, extent, rent, annuity, forfeiture, reentry, and any and every other estate, title, charge, trouble, and incumbrance whatsoever, made, executed, occasioned or suffered by the said covenantor or his heirs, or by any person claiming or to claim by, from, under, or in trust for him, them, or any of them.
5. And the said [*covenantor*] covenants with the said [*covenantee*], that he will execute such further assurances of the said lands as may be requisite.	5. And the said covenantor doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said covenantee, his heirs and assigns, that he the said covenantor, his heirs, executors, or administrators, and all and every other person whosoever having or claiming, or who shall or may hereafter have or claim, any estate, right, title, or interest whatsoever, either at law or in equity, in, to, or out of the said lands and premises hereby conveyed or intended so to be, or any of them, or any part thereof, by, from, under, or in trust for him, them, or any of them, shall and will from time to time, and at all times hereafter, upon every reasonable request, and at the costs and charges of the said covenantee, his heirs or assigns, make, do, execute, or cause to be made, done, or

COLUMN I.—*continued.*

COLUMN II.—*continued.*

executed, all such further and other lawful acts, deeds, things, devices, conveyances, and assurances in the law whatsoever, for the better, more perfectly, and absolutely conveying and assuring the said lands and premises hereby conveyed or intended so to be, and every part thereof, with their appurtenances, unto the said covenantee, his heirs and assigns, in manner aforesaid, as by the said covenantee, his heirs and assigns, his or their counsel in the law, shall be reasonably devised, advised, or required, so as no such further assurances contain or imply any further or other covenant or warranty than against the acts and deeds of the person who shall be required to make or execute the same, and his heirs, executors, or administrators only, and so as no person who shall be required to make or execute such assurances shall be compelable for the making or executing thereof to go or travel from his usual place of abode.

6. And the said [*covenantor*] covenants with the said [*covenantee*], that he will produce the title-deeds enumerated hereunder, and allow copies to be made of them, at the expense of the said [*covenantee*].

6. And the said covenantor doth hereby, for himself, his heirs, executors, and administrators, covenant, promise, and agree with and to the said covenantee, his heirs and assigns, that the said covenantor and his heirs shall and will, unless prevented by fire or other inevitable accident, from time to time, and at all times hereafter, at the request, costs, and charges of the said covenantee, his heirs or assigns, or his or their attorney, solicitor, agent, or counsel, at any trial or hearing in any action or suit at law or in equity or other judicature, or

COLUMN I.—*continued.*

COLUMN II.—*continued.*

otherwise, as occasion shall require, produce all and every or any deed, instrument, or writing hereunder written, for the manifestation, defence, and support of the estate, title, and possession of the said covenantee, his heirs or assigns, in or to the said lands and premises hereby conveyed, or intended so to be, and, at the like request, costs, and charges, shall and will make and deliver, or cause to be made and delivered, true and attested or other copies or abstracts of the same deeds, instruments, and writings respectively, or any of them, and shall and will permit and suffer such copies and abstracts to be examined and compared with the said original deeds by the said covenantee, his heirs and assigns, or such person as he or they shall for that purpose direct and appoint.

7. And the said [*covenantor*] covenants with the said [*covenantee*], that he has done no act to incumber the said lands.

7. And the said covenantor, for himself, his heirs, executors, and administrators, doth hereby covenant, promise, and agree with and to the said covenantee, his heirs and assigns, that he hath not at any time heretofore made, done, committed, executed, or wilfully or knowingly suffered, any act, deed, matter, or thing whatsoever, whereby or by means whereof the said lands and premises hereby conveyed, or intended so to be, or any part or parcel thereof, are, is, or shall or may be in anywise impeached, charged, affected, or incumbered in title, estate, or otherwise howsoever.

8. And the said [*relea-*

8. And the said releasor hath remised,

COLUMN I.—*continued.*

sor] releases to the said [*releasee*] all his claims upon the said lands.

COLUMN II.—*continued.*

released, and for ever quitted claim, and by these presents doth remise, release, and for ever quit claim, unto the said releasee, his heirs and assigns, all and all manner of right, title, interest, claim, and demand whatsoever, both at law and in equity, into and out of the said lands and premises hereby granted, or intended so to be, and every part and parcel thereof, so as that neither he, nor his heirs, executors, administrators, or assigns, shall, nor may at any time hereafter, have, claim, pretend to, challenge, or demand the said lands and premises, or any part thereof, in any manner howsoever; but the said releasee, his heirs and assigns, and the same lands and premises, shall from henceforth for ever hereafter be exonerated and discharged of and from all claims and demands whatsoever which the said releasor might or could have upon him in respect of the said lands or upon the said lands.

8 & 9 Vict. Cap. 124.

An Act to facilitate the granting of certain Leases.

Whereas it is expedient to facilitate the leasing of lands and tenements: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That, whenever any party to any deed made according to the Forms set forth in the first schedule to this act, or to any other deed which shall be expressed to be made in pursuance of this act, shall employ in such deed respectively any of the form of words contained in column I. of the second schedule hereto annexed, and distinguished by any number therein, such deed shall be taken to have the same effect, and be construed as if such party had inserted in such deed the form of words contained in column II. of the same schedule, and distinguished by the same number as is annexed to the form of words employed by such party; but it shall not be necessary in any such deed to insert any such number.

Where the words of column I. of the second schedule employed, the deed to have the same effect as if words of column II. were inserted.

II. That every such deed, unless any exception be specially made therein, shall be held and construed to include all outhouses, buildings, barns, stables, yards, gardens, cellars, ancient and other lights, paths, passages, ways, waters, watercourses, liberties, privileges, easements, profits, commodities, emoluments, hereditaments, and appurtenances whatsoever, to the lands and tenements therein comprised belonging, or in anywise appertaining.

Deed to include all houses, &c.

III. That, in taxing any bill for preparing and executing any deed under this act, it shall be lawful for the taxing officer, and he is hereby required, in estimating the proper

Remuneration for deed under the act not to be by length only.

sum to be charged for such transaction, to consider, not the length of such deed, but only the skill and labour employed, and responsibility incurred, in the preparation thereof.

IV. That any deed, or part of a deed, which shall fail to take effect by virtue of this act, shall nevertheless be as valid and effectual, and shall bind the parties thereto, so far as the rules of law and equity will permit, as if this act had not been made.

Deed failing to take effect by this act to be as valid as if act not made.

V. That in the construction, and for the purposes of this act, and the schedules hereto annexed, unless there be something in the subject or context repugnant to such construction, the word "lands" shall extend to all tenements and hereditaments of freehold tenure, and to such customary lands as will pass by deed, or deed and surrender, and not by surrender alone, or any undivided part or share therein respectively; and every word importing the singular number only shall extend and be applied to several persons or things as well as one person or thing, and the converse; and every word importing the masculine gender only shall extend and be applied to a female as well as a male; and the word "party" shall mean and include any body politic or corporate or collegiate, as well as an individual.

Construction clause.

VI. That the schedules, and the directions and forms therein contained, shall be deemed and taken to be parts of this act.

Schedules, &c. part of act.

VII. That this act shall commence and take effect from and after the first day of October.

Commencement of act.

VIII. That this act shall not extend to Scotland.

Act not to extend to Scotland.

SCHEDULES TO WHICH THIS ACT REFERS.

THE FIRST SCHEDULE.

This Indenture made the —— day of ——, one thousand eight hundred and forty- [*or other year*], in pursuance of an act to facilitate the granting of certain leases, between [*here insert the names of the parties and recitals, if any*], witnesseth, that the said [*lessor or lessors*] doth [*or*, "do"] demise unto the said [*lessee or lessees*], his [*or*, "their"] executors, administrators, and assigns, all &c. [*parcels*], from the —— day of ——, for the term of —— thence ensuing, yielding therefore during the said term the rent of [*state the rent and mode of payment*]. In witness whereof the said parties hereto have hereunto set their hands and seals.

THE SECOND SCHEDULE.

Directions as to the Forms in this Schedule.

1. Parties who use any of the Forms in the first column of this schedule may substitute for the words "lessee" or "lessor" any name or names; and in every such case corresponding substitutions shall be taken to be made in the corresponding Forms in the second column.

2. Such parties may substitute the feminine gender for the masculine, or the plural number for the singular, in the Forms in the first column of the schedule, and corresponding changes shall be taken to be made in the corresponding Forms in the second column.

3. Such parties may fill up the blank spaces left in the

Forms 4 and 5 in the first column of this schedule so employed by them with any words or figures, and the words or figures so introduced shall be taken to be inserted in the corresponding blank spaces left in the Forms embodied.

4. Such parties may introduce into or annex to any of the Forms in the first column any express exceptions from or express qualifications thereof respectively, and the like exceptions or qualifications shall be taken to be made from or in the corresponding Forms in the second column.

5. Where the premises demised shall be of freehold tenure, the covenants 1 to 10 shall be taken to be made with, and the proviso 11 to apply to, the heirs and assigns of the lessor; and where the premises demised shall be of leasehold tenure, the covenants and proviso shall be taken to be made with and apply to the lessor, his executors, administrators, and assigns.

COLUMN I.	COLUMN II.
1. That the said [*lessee*] covenants with the said [*lessor*] to pay rent;	1. And the said lessee doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessor that he the said lessee, his executors, administrators, and assigns, will, during the said term, pay unto the said lessor the rent hereby reserved, in manner hereinbefore mentioned, without any deduction whatsoever;
2. and to pay taxes;	2. and also will pay all taxes, rates, duties, and assessments whatsoever, whether parochial, parliamentary, or otherwise, now charged, or hereafter to be charged upon the said demised premises, or upon the said lessor on account thereof, (excepting land-tax, and excepting, in Ireland, tithe rent-charge, and such portion of the poor-rate as the lessor is or may

Column I.—*continued.*	Column II.—*continued.*
	be liable to pay, and excepting also all taxes, rates, duties, and assessments whatsoever, or any portion thereof, which the lessee is or may be by law exempted from);
3. and to repair;	3. and also will, during the said term, well and sufficiently repair, maintain, pave, empty, cleanse, amend, and keep the said demised premises, with the appurtenances, in good and substantial repair, together with all chimney-pieces, windows, doors, fastenings, water-closets, cisterns, partitions, fixed presses, shelves, pipes, pumps, pales, rails, locks, and keys, and all other fixtures and things which at any time during the said term shall be erected and made, when, where, and so often as need shall be;
4. and to paint outside every —— year;	4. and also that the said lessee, his executors, administrators, and assigns, will, in every —— year in the said term, paint all the outside wood-work and iron-work belonging to the said premises with two coats of proper oil colours, in a workmanlike manner;
5. and to paint and paper every —— year;	5. and also that the said [*lessee*], his executors, administrators, and assigns, will, in every —— year, paint the inside wood, iron, and other works now or usually painted with two coats of proper oil colours, in a workmanlike manner; and also re-paper, with paper of a quality as at present, such parts of the premises as are now papered; and also wash, stop, whiten, or colour such parts of the said premises as are now plastered;

Column I.—*continued.*	Column II.—*continued.*
6. and to insure from fire, in the joint names of the said [*lessor*] and the said [*lessee*];	6. and also that the said lessee, his executors, administrators, and assigns, will forthwith insure the said premises hereby demised to the full value thereof, in some respectable insurance office, in the joint names of the said lessor, his executors, administrators, and assigns, and the said lessee, his executors, administrators, or assigns, and keep the same so insured during the said term; and will, upon the request of the said lessor or his agent, shew the receipt for the last premium paid for such insurance for every current year; and, as often as the said premises hereby demised shall be burnt down or damaged by fire, all and every the sums or sum of money which shall be recovered by the said [*lessee*], his executors, administrators, or assigns, for or in respect of such insurance, shall be laid out and expended by him in building or repairing the said demised premises, or such parts thereof as shall be burnt down or damaged by fire, as aforesaid.
to shew receipts;	
and to rebuild in case of fire.	
7. And that the said [*lessor*] may enter and view state of repair, and that the said [*lessee*] will repair according to notice.	7. And it is hereby agreed, that it shall be lawful for the said lessor and his agents, at all seasonable times during the said term, to enter the said demised premises, to take a schedule of the fixtures and things made and erected thereupon, and to examine the condition of the said premises; and, further, that all wants of reparation which upon such views shall be found, and for the amendment of which notice in writing shall be left at the premises, the said lessee, his executors, ad-

Column I.—*continued.*	Column II.—*continued.*
	ministrators, and assigns, will, within three calendar months next after every such notice, well and sufficiently repair and make good accordingly.
8. That the said [*lessee*] will not use premises as a shop;	8. And also, that the said lessee, his executors, administrators, and assigns, will not convert, use, or occupy the said premises, or any part thereof, into or as a shop, warehouse, or other place for carrying on any trade or business whatsoever, or suffer the said premises to be used for any such purpose, or otherwise than as a private dwelling-house, without the consent in writing of the said lessor.
9. and will not assign without leave;	9. And also that the said [*lessee*] shall not, nor will, during the said term, assign, transfer, or set over, or otherwise, by any act or deed, procure the said premises, or any of them, to be assigned, transferred, or set over, unto any person or persons whomsoever, without the consent in writing of the said [*lessor*], his executors, administrators, or assigns, first had and obtained.
10. And that he will leave premises in good repair.	10. And, further, that the said [*lessee*] will, at the expiration, or other sooner determination of the said term, peaceably surrender and yield up unto the said lessor the said premises hereby demised, with the appurtenances, together with all buildings, erections, and fixtures now or hereafter to be built or erected thereon, in good and substantial repair and condition in all respects, reasonable wear and tear, and damage by fire, only excepted.

Column I.—*continued.*	Column II.—*continued.*
11. Proviso for re-entry by the said lessor on non-payment of rent, or non-performance of covenants.	11. Provided always, and it is expressly agreed, that, if the rent hereby reserved, or any part thereof, shall be unpaid for fifteen days after any of the days on which the same ought to have been paid, (although no formal demand shall have been made thereof), or in case of the breach or non-performance of any of the covenants and agreements herein contained on the part of the said lessee, his executors, administrators, and assigns, then and in either of such cases it shall be lawful for the said lessor, at any time thereafter, into and upon the said demised premises, or any part thereof in the name of the whole, to re-enter, and the same to have again, re-possess, and enjoy as of his or their former estate, anything hereinafter contained to the contrary notwithstanding.
12. The said [*lessor*] covenants with the said [*lessee*] for quiet enjoyment.	12. And the lessor doth hereby, for himself, his heirs, executors, administrators, and assigns, covenant with the said lessee, his executors, administrators, and assigns, that he and they, paying the rent hereby reserved, and performing the covenants hereinbefore on his and their part contained, shall and may peaceably possess and enjoy the said demised premises for the term hereby granted, without any interruption or disturbance from the said lessor, his executors, administrators, or assigns, or any other person or persons lawfully claiming by, from, or under him, them, or any of them.

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